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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 510

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF CORDELIA Y. ABENDROTH, DECEASED, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

No. 511

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF KATE READ BLACQUE, DECEASED, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 16, 1940.

CERTIORARI GRANTED NOVEMBER 18, 1940.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 510

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF CORDELIA Y. ABENDROTH, DECEASED, PETITIONER,

vs.

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No. 511

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF KATE READ BLACQUE, DECEASED, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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United States Board of Tax Appeals.

Docket No. 94755.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Cordelia Y. Abendroth, deceased,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket Entries.

APPEARANCES:

For Petitioner: JAMES D. OUCHTERLONEY, ESQ., GEO. H. CRAVEN, ESQ., EARLE J. STARKEY, ESQ.

For Respondent: B. M. BRODSKY, ESQ., E. O. HANSON, ESQ.

1938

July 16—Petition received and filed. Taxpayer notified. (Fee paid.)

July 16—Copy of petition served on General Counsel.

Aug. 15—Answer filed by General Counsel.

Aug. 15—Request for hearing at New York filed by General Counsel.

Aug. 19—Notice issued placing proceeding on New York, N. Y. Calendar. Answer and request served.

1939

July 10—Hearing set Sept. 25, 1939, New York, N. Y.

July 17—Motion to consolidate with docket 97857 for hearing 9/25/39 in New York filed by taxpayer.

Docket Entries.

4 Aug. 19—Motion granted—consolidated for hearing 9/25/39, New York, N. Y.

Sept. 29—Hearing had before Mr. Opper, Division 14. Stipulation of facts filed. Consolidated with 97857. Briefs due Nov. 13, 1939. Reply briefs due Nov. 28, 1939.

Oct. 9—Transcript of hearing Sept. 29, 1939 filed.

Nov. 13—Brief filed by taxpayer.

Nov. 13—Motion for extension to Nov. 20, 1939 to file brief filed by General Counsel. 11/14/39 granted.

Nov. 20—Brief filed by General Counsel.

5 Nov. 21—Copy of petitioner's brief served on General Counsel.

Dec. 5—Motion for extension of time to Dec. 12, 1939 to file reply brief filed by taxpayer. 12/6/39 granted.

Dec. 12—Reply brief filed by taxpayer.

1940

May 17—Opinion rendered—Clarence V. Opper, Division 14. Decision will be entered for the respondent.

May 18—Decision entered—C. R. Arundell, Division 14.

July 5—Petition for review by U. S. Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.

6 July. 17—Proof of service filed by taxpayer.

Aug. 13—Certified copy of order from Second Circuit consolidating #94755 and #97857 for the purpose of sending up one record, filed.

Aug. 13—Praecipe filed by taxpayer—proof of service and agreement thereon.

Docket Entries.

UNITED STATES BOARD OF TAX APPEALS.

Docket No. 97857.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, deceased,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

APPEARANCES:

For Petitioner: THOMAS K. EGAN, JR., ESQ., GEORGE CRAVEN, ESQ.

For Respondent: B. M. BRODSKY, ESQ., E. O. HANSON, ESQ.

1939

Apr. 8—Petition received and filed. Taxpayer notified. (Fee paid.)

Apr. 8—Copy of petition served on General Counsel.

Apr. 8—Request for Circuit hearing in New York City filed by taxpayer. 4/8/39 copy served.

May 4—Answer filed by General Counsel.

May 11—Copy of answer served on taxpayer—New York, N. Y.

Aug. 17—Motion for hearing in New York 9/25/39 and for consolidation with docket 94755 filed by taxpayer. 8/19/39 granted—consolidated for hearing 9/25/39, New York, N. Y.

Docket Entries.

10 Aug. 21—Hearing set beginning Sept. 25, 1939 in New York, N. Y.

Sept. 29—Hearing had before Mr. Opper, Division 14, on merits. Consolidated with docket 94755. Stipulation of facts filed. Briefs due Nov. 13, 1939. Reply briefs due Nov. 28, 1939.

Oct. 9—Transcript of hearing Sept. 29, 1939 filed.

Nov. 13—Brief filed by taxpayer.

Nov. 13—Motion for extension to Nov. 20, 1939 to file brief filed by General Counsel. 11/14/39 granted.

Nov. 29—Brief filed by General Counsel.

11 Nov. 21—Copy of taxpayer's brief served on General Counsel.

Dec. 5—Motion for extension of time to Dec. 12, 1939 to file reply brief filed by taxpayer. 12/6/39 granted.

Dec. 12—Reply brief filed by taxpayer.

1940

May 17—Opinion rendered—Clarence V. Opper, Division 14. Decision will be entered for the respondent.

May 18—Decision entered—C. R. Arundell, Division 7.

July 5—Petition for review by U. S. Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.

12 July 17—Proof of service filed by taxpayer.

Aug. 13—Certified copy of order from Second Circuit consolidating dockets 94755 and 97857 for purpose of sending up one record, filed.

Aug. 13—Praecipe filed by taxpayer—proof of service and agreement thereon.

Petition.

13

UNITED STATES BOARD OF TAX APPEALS.

Docket No. 94755.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, as executor of the last will and testament of Cordelia Y. Abendroth, deceased,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

14

The above-named petitioner, City Bank Farmers Trust Company, as executor of the last will and testament of Cordelia Y. Abendroth, deceased, hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency bearing the symbols "MT-ET-Cl-7406-14th New York, Estate of Cordelia Y. Abendroth, Date of death—October 9, 1936", which notice of deficiency bears date June 25, 1938, and as a basis for this proceeding alleges as follows upon information and belief:—

15

1. Cordelia Y. Abendroth died on the 9th day of October, 1936, a resident of Harrison, County of Westchester, State of New York. Said decedent left a last will and testament bearing date the 20th day of March, 1923, and a codicil thereto bearing date the 28th day of January, 1932, which were duly admitted to probate by the Surrogate's Court of said County of Westchester, to which jurisdiction in that behalf belonged, on the 16th day of October, 1936, and letters testamentary thereon bearing date said day were duly issued by said court to City Bank Farmers

16 Trust Company, a corporation duly organized and existing under the laws of the State of New York and having its principal place of business at No. 22 William Street, City, County and State of New York. City Bank Farmers Trust Company has been ever since and still is acting as such executor. The return for the Federal estate tax here involved was filed with the Collector of Internal Revenue for the Third District of New York on November 23, 1937.

2. The notice of deficiency (a copy of which is hereto annexed, marked Exhibit A and made a part hereof) was mailed to the petitioner on June 23, 1938.

17 3. The taxes in controversy are Federal estate taxes determined pursuant to the alleged provisions of Title III of the Revenue Act of 1926 as amended and are for and in the sum of $432.83.

4. The determination of the tax set forth in said notice of deficiency is based upon the following errors:—

(a) The said respondent erred in determining that there should be included in the gross estate the sum of $3,783.91, which represented dividends declared and interest earned between the date of the decedent's death and the subsequent optional valuation date, elected by the executor in
18 the Federal estate tax return, pursuant to Section 302(j) of the Revenue Act of 1926 as added by Section 202 of the Revenue Act of 1935.

5. The facts upon which the petitioner relies as a basis for this proceeding are as follows:—

(a) The executor upon its return on Form 706 duly filed within the time prescribed by law, elected to have the gross estate valued at the optional valuation date provided in Section 302(j) of the Revenue Act of 1926, as

added by Section 202 of the Revenue Act of 1935. Subsequent to the date of the decedent's death and up to the said optional valuation date, the dividends declared and interest earned by the assets of the estate amounted to $3,783.91. Said interest and dividends were included by the Commissioner in the gross estate. The inclusion by the Commissioner in the gross estate of the said sum of $3,783.91, which represents dividends declared and interest earned between the date of death and the subsequent optional valuation date, is contrary to the express provisions of Section 302(j) of the Revenue Act of 1926 as added by Section 202 of the Revenue Act of 1935, since that section provides only that property included in the gross estate on the date of the decedent's death shall be valued at the optional valuation date. The provisions of Article 11 of Estate Tax Regulations 80 (1937 Edition), which purport to require the inclusion of such income earned and dividends declared subsequent to the date of death, are contrary to the express provisions of said Revenue Act as amended.

(b) The income earned and dividends declared subsequent to the date of death constituted income and not principal of the decedent's estate and were returned by the executor and by the beneficiaries (to the extent that the same was distributed to such beneficiaries during the taxable year) for income tax purposes and an income tax was paid thereon by the beneficiaries on that part of the income distributed to them.

(c) The petitioner alleges further that if Title III of the Revenue Act of 1926 and Section 302(j) thereof, as added by Section 202 of the Revenue Act of 1935, may be construed or applied so as to include in the gross estate of said decedent interest earned and dividends declared subsequent to the date of death, said statutes are unconstitutional and in violation of the Fifth Amendment of the

22 Constitution of the United States in that they result in the taking of private property for public use without just compensation and in the taking of property without due process of law and are in violation of the Fourth Clause of Section 9 and the Third Clause of Section 2 of Article I of the Constitution of the United States, in that they result in the levying of a direct tax without apportionment.

WHEREFORE, your petitioner prays that this Board may hear the proceeding and determine:—

(a) That the interest earned and dividends declared
23 between the date of death and the subsequent optional valuation date should not be included in the gross estate; and

(b) That there is no deficiency.

And your petitioner will ever pray, &c.

JAMES D. OUCHTERLONEY,
GEORGE H. CRAVEN,
EARLE J. STARKEY,
Counsel for Petitioner,
Office & Post Office Address,
No. 20 Exchange Place,
24 New York, N. Y.

MITCHELL, TAYLOR, CAPRON & MARSH,
No. 20 Exchange Place,
New York, N. Y.
Of Counsel.

State of New York,
County of New York—ss.:

P. A. MILLER, being duly sworn, deposes and says: That he is a Trust Of[illegible]f City Bank Farmers Trust Company, as executor [illegible]e last will and testament of Cordelia Y. Abendroth, deceased, and the petitioner herein, and as such is authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein and that the facts stated are true except as to those facts stated to be upon information and belief and those facts he believes to be true.

P. A. MILLER.

Sworn to before me this
8th day of July, 1938.

ALBERT C. POTTS,
Notary Public,
Queens County, N. Y.
Queens Co. Clk's No. 1574, Reg. No. 1235.
Kings Co. Clk's No. 90, Reg. No. 196.
N. Y. Co. Clk's No. 152, Reg. No. 0-P-93.
Commission expires March 30th, 1940.

EXHIBIT A, ANNEXED TO PETITION.

28

TREASURY DEPARTMENT
WASHINGTON

June 25, 1938

MT-ET-Cl-7406-14th New York
Estate of Cordelia Y. Abendroth
Date of death—October 9, 1936

City Bank Farmers Trust Company, Executor,
22 William Street
New York, New York.
Gentlemen:

29

A deficiency of $432.83 in the Federal estate tax liability of the above-named estate has been determined after a review of the file in the case and a consideration of the protest against a deficiency proposed in a previous letter from this office. The determination of the deficiency and the action of this office on the protest are fully explained in the attached statement.

This notice of deficiency is given in accordance with the provisions of Section 306 (a) of the Revenue Act of 1926 as amended by Section 501 of the Revenue Act of 1934, and a petition for a redetermination of the deficiency may be filed with the United States Board of Tax Ap-

30

peals within 90 days (not including Sunday or a legal holiday in the District of Columbia as the nintieth day) from the date of the mailing of this letter. If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute and forward the enclosed Form 890, waiving the restrictions on the immediate assessment and collection of the deficiency.

The submission of the waiver will expedite the closing of this case and will also benefit the estate by preventing the accumulation of interest charges, as the interest

period terminates 30 days after the filing of the waiver or on the date of assessment, whichever is earlier. The signing of the waiver does not prejudice your right to file a claim for refund of all or any portion of the tax. If you desire to consent to the assessment and collection of only a part of the deficiency, the enclosed form of waiver should be executed in such partial amount.

If within the 90-day period a petition has not been filed with the United States Board of Tax Appeals or the waiver, Form 890, has not been submitted, the deficiency will be thereafter assessed.

Respectfully,

GUY T. HELVERING,
Commissioner,
By (Sgd.) D. S. Bliss,
Deputy Commissioner.

Enclosures:
Statement
Waiver, Form 890.

MT-ET-Cl-7406-14th New York
Estate of Cordelia Y. Abendroth
Date of death—October 9, 1936

STATEMENT

The protest relates to the following items:

Gross Estate

Stocks and Bonds	Returned	Tentatively Determined	Determined
Accrued income	$0.00	$3,783.91	$3,783.91

Exhibit A, Annexed to Petition.

34 Your contention that this item, representing dividends and interest accrued or paid between the date of death and the subsequent optional valuation date, is not subject to inclusion in the gross estate, under the provisions of section 302 (j) of the Revenue Act of 1926 as added by section 202 of the Revenue Act of 1935, is denied, Article 11, Estate Tax Regulations 80 (1937 Edition).

DEDUCTIONS			
Executor's commission	$2,171.71	0.00	2,026.82

In view of the foregoing, the Federal estate tax lia-
35 bility of this estate is finally determined as follows:

Gross estate	96,699.18
Deductions	45,215.69
Net estate	51,483.49
Total net tax	3,178.02
Returned tax	2,745.19
Deficiency	$ 432.83

The deficiency bears interest at the rate of 6 per cent per annum from 15 months after the decedent's death to
36 the date of assessment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is the earlier.

Answer.

37

UNITED STATES BOARD OF TAX APPEALS.

Docket No. 94755.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, as executor of the last will and testament of Cordelia Y. Abendroth, deceased,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent. 38

COMES NOW the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and in answer to the petition filed herein, admits, denies and avers as follows:

1. Admits the allegations contained in paragraph 1 of the petition, except it is denied that the return for the Federal estate tax here involved was filed with the Collector of Internal Revenue for the Third District of New York on November 23, 1937. Avers that said return was filed in the Fourteenth Collection District of New York on 39 November 24, 1937.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits that the taxes in controversy are Federal estate taxes determined pursuant to the provisions of Title III of the Revenue Act of 1926 as amended. Denies the remaining allegations contained in paragraph 3 of the petition.

Answer.

40 4(a). Denies that the Commissioner erred as alleged in paragraph 4(a) of the petition.

5(a). Admits that the executor upon its return on Form 706 filed within the time prescribed by law, elected to have the gross estate valued at the optional valuation date provided in section 302(j) of the Revenue Act of 1926, as added by section 202 of the Revenue Act of 1935. Admits that subsequent to the date of the decedent's death and up to the said optional valuation date, dividends and interest accrued or were paid to the estate in the amount of $3,783.91. Admits that said interest and dividends were included by the Commissioner in the gross
41 estate. Denies the remaining allegations contained in sub-paragraph (a) of paragraph 5 of the petition.

(b) and (c). Denies the allegations contained in sub-paragraphs (b) and (c) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation contained in the taxpayer's petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the appeal be denied and the taxes as shown in the deficiency notice be in all respects approved.

42 Signed J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

E. O. HANSON,
Division Counsel.

B. M. BRODSKY,
Special Attorney,
Bureau of Internal Revenue.

Petition.

UNITED STATES BOARD OF TAX APPEALS.

Docket No. 97857.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, Deceased,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

The above named petitioner, City Bank Farmers Trust Company, as executor of the Last Will and Testament of Kate Read Blacque, deceased, hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency bearing the symbols "MT-ET-9041-2nd New York, Estate of Kate Read Blacque, Date of death—April 3, 1937", which notice of deficiency bears date April 3, 1939, and as a basis for this proceeding alleges as follows upon information and belief:

1. Kate Read Blacque died on or about the 3rd day of April, 1937, being at the time of her death a resident of the City, County and State of New York. Said decedent left a Last Will and Testament bearing date the 30th day of June, 1936, which was duly admitted to probate by the Surrogate's Court of said County of New York, to which jurisdiction in that behalf belonged, on the 27th day of April, 1937, and letters testamentary thereon and letters of trusteeship thereunder bearing date on or about said date were duly issued by said Court

46 to City Bank Farmers Trust Company, a corporation duly organized and existing under the laws of the State of New York and having its principal place of business at No. 22 William Street, City, County and State of New York. City Bank Farmers Trust Company has been ever since and still is acting as such executor and as such trustee. The return for the Federal estate tax here involved was filed with the Collector of Internal Revenue for the Second District of New York on July 1, 1938.

2. The notice of deficiency (a copy of which is hereto
47 annexed, marked Exhibit A and made a part hereof) was mailed to the petitioner on April 3, 1939.

3. The taxes in controversy are Federal estate taxes determined pursuant to the alleged provisions of Title III of the Revenue Act of 1926 as amended and are for and in the sum of $13,996.28.

4. The determination of the tax set forth in said notice of deficiency is based upon the following errors:

(a) The said respondent erred in determining that there should be included in the gross estate the sum of
48 $54,578.60, which represents dividends declared and interest earned between the date of the decedent's death and the subsequent optional valuation date, elected by the executor in the Federal estate tax return, pursuant to Section 302(j) of the Revenue Act of 1926 as added by Section 202 of the Revenue Act of 1935.

5. The facts upon which the petitioner relies as a basis for this proceeding are as follows:

(a) The executor upon its return on Form 706 duly filed within the time prescribed by law, elected to have

the gross estate valued at the optional valuation date provided in Section 302(j) of the Revenue Act of 1926, as added by Section 202 of the Revenue Act of 1935. Subsequent to the date of the decedent's death and up to the said optional valuation date, the dividends declared and interest earned by the assets of the estate amounted to $54,578.60. Said interest and dividends were included by the Commissioner in the gross estate. The inclusion by the Commissioner in the gross estate of the said sum of $54,578.60, which represents dividends declared and interest earned between the date of death and the subsequent optional valuation date, is contrary to the express provisions of Section 302(j) of the Revenue Act of 1926 as added by Section 202 of the Revenue Act of 1935, since that section provides only that property included in the gross estate on the date of the decedent's death shall be valued at the optional valuation date. The provisions of Article 11 of Estate Tax Regulations 80 (1937 Edition), which purport to require the inclusion of such income earned and dividends declared subsequent to the date of death, are contrary to the express provisions of said Revenue Act as amended.

(b) The income earned and dividends declared subsequent to the date of death constituted income and not principal of the decedent's estate and were returned by the executor and by the beneficiaries (to the extent that the same was distributed to such beneficiaries during the taxable year) for income tax purposes and an income tax was paid thereon by the beneficiaries on that part of the income distributed to them.

(c) The petitioner alleges further that if Title III of the Revenue Act of 1926 and Section 302(j) thereof, as added by Section 202 of the Revenue Act of 1935, may be construed or applied so as to include in the gross estate of said decedent interest earned and dividends declared

52 subsequent to the date of death, said statutes are unconstitutional and in violation of the Fifth Amendment of the Constitution of the United States in that they result in the taking of private property for public use without just compensation and in the taking of property without due process of law and are in violation of the Fourth Clause of Section 9 and the Third Clause of Section 2 of Article I of the Constitution of the United States, in that they result in the levying of a direct tax without apportionment.

WHEREFORE, your petitioner prays that this Board may
53 hear the proceeding and determine:

(a) That the interest earned and dividends declared between the date of death and the subsequent optional valuation date should not be included in the gross estate; and

(b) That there is no deficiency.

THOMAS K. EGAN, JR.,
GEORGE CRAVEN,
Counsel for Petitioner,
Office and Post Office Address,
20 Exchange Place,
New York, N. Y.

54

MITCHELL, TAYLOR, CAPRON & MARSH,
No. 20 Exchange Place,
New York, N. Y.
Of Counsel.

Petition.

State of New York,
County of New York—ss.: 55

P. A. MILLER, being duly sworn, deposes and says: That he is a Trust Officer of City Bank Farmers Trust Company, as executor of the Last Will and Testament of Kate Read Blacque, deceased, and the petitioner herein, and as such is authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein and that the facts stated are true except as to those facts stated to be upon informaion and belief and those facts he believes to be true. 56

P. A. MILLER.

Sworn to before me this
7th day of April, 1939.

ALBERT C. POTTS,
Notary Public,
Queens County, N. Y.
Queens Co. Clk's No. 1574, Reg. No. 1235.
Kings Co. Clk's No. 90, Reg. No. 196.
N. Y. Co. Clk's No. 152, Reg. No. O-P-93.
Commission expires March 30th, 1940. 57
(Seal)

Form 1236 SN-ET-1

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EXHIBIT A, ANNEXED TO PETITION.

TREASURY DEPARTMENT
Internal Revenue Service

April 3, 1939

Office of
Internal Revenue Agent in Charge
2d New York Division
MT-ET-9041-2nd New York
Estate of Kate Read Blacque
Date of death—April 3, 1937

59

City Bank Farmers Trust Co., Executor
22 William Street
New York, New York

Gentlemen:

You are advised that the determination of the estate-tax liability of the above-named estate, discloses a deficiency of $13,996.28, as shown in the statement attached.

In accordance with the provisions of existing internal-revenue laws, notice is hereby given of the deficiency mentioned.

60 Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to Revenue Agent in Charge, 90 Church Street, New York, for the attention of Estate Tax Division. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency

and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier. 61

Respectfully,

GUY T. HELVERING,
Commissioner,
By (Sgd.) C. R. KEIGBAUM,
Internal Revenue Agent in Charge.

Enclosures:
Statement.
Form of waiver. 62

(GPO 2-17683)

63

Exhibit A, Annexed to Petition.

ESTATE TAX

64 MT-ET 9041-2nd New York
Estate of Kate Read Blacque
Date of death April 3, 1937

STATEMENT

	Returned	Tentatively Determined
Gross Estate	1,514,526.91	1,569,105.51
Deductions (1926 Act)	213,619.14	213,524.77
Net estate (1926 Act)	1,300,907.77	1,355,580.74
Gross Estate	1,514,526.91	1,569,105.51
Deductions (1932 Act)	153,619.14	153,524.77
65		
Net estate (1932 Act)	1,360,907.77	1,415,580.74
1. Gross tax (1926 Act)	72,572.62	76,946.46
2. Credit for gift tax	—	—
3. Gross tax less gift tax credit	72,572.62	76,946.46
4. Credit for estate or inheritance tax	58,058.10	61,557.17
5. Net tax (1926 Act)	14,514.52	15,389.29
6. Total gross taxes (1926 and 1932 Acts)	338,090.49	355,585.84
66 7. Gross tax (1926 Act)	72,572.62	76,946.46
8. Gross additional tax	265,517.87	278,639.38
9. Credit for gift tax	—	—
10. Net additional tax	265,517.87	278,639.38
11. Total net tax	280,032.39	294,028.67
Amount assessed as deficiency pursuant to waiver		
Deficiency		13,996.28

Exhibit A, Annexed to Petition.

STATEMENT 67

The deficiency results from the following adjustments:

Stocks and Bonds	Returned	Tentatively Determined	Determined
Items 1-131	1,392,169.54	1,392,169.54	1,392,169.54
Income received and accrued to optional date	0	54,578.60	54,578.60
Total	1,392,169.54	1,446,748.14	1,446,748.14

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The inclusion of income received and accrued to the date under option has been determined pursuant to the provisions of Article 11, Regulations 80, 1937 Edition, carrying into effect the provisions of Section 302(j) of the Revenue Act of 1926 (as added by section 202(a) of the Revenue Act of 1935). Regulations 80 were issued in accordance with Section 1101 of the Statute, which provides that the Commissioner, with the approval of the Secretary of the Treasury, shall prescribe and publish all needful rules and regulations for the enforcement of the Statute. The said regulations were published in accordance with such approval.

69

Exhibit A, Annexed to Petition.

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DEDUCTIONS

	Claimed	Tentatively Determined	Determined
Executor's Commission	35,204.02	33,215.53	33,215.53
Miscellaneous administration expenses	7,166.98	9,061.10	9,061.10

The executor's commissions have been determined in the sum allowed by the Surrogate and paid.

71

Item 33 of miscellaneous administration expenses has been increased from $1,000.00 to $3,027.87, proof having been given of the following payments:—

Inter-Continental Forwarding Co.	66.30
Brown & Roese	29.31
Federal & State transfer stamps	432.26
Francis Curry, Special Guardian	2,500.00
	3,027.87.

Item 34 has been allowed to the extent of $1,250.00, which was the amount paid thereon.

72

Answer.

73

UNITED STATES BOARD OF TAX APPEALS.

Docket No. 97857.

CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, Deceased,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

74

Now comes the respondent by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed in the above-entitled case, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3.

4(a). Denies that the determination of tax as contained in the deficiency notice is based upon the errors alleged and set forth in paragraph 4(a).

75

5(a). Admits the allegations contained in the first sentence of subparagraph (a) of paragraph 5 of the petition; admits that the income received and accrued to the optional valuation date amounted to $54,578.60, and that said income was included in the decedent's gross estate by the respondent in his deficiency notice; denies all other allegations contained in subparagraph (a) of paragraph 5 of the petition.

76 5(b) and 5(c). Denies the allegations contained in paragraphs 5(b) and 5(c).

6. Denies generally and specifically each and every allegation contained in taxpayer's petition, not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that taxpayer's appeal be denied.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

77 Of Counsel:

E. O. HANSON,
Division Counsel,

CONWAY N. KITCHEN,
Special Attorney,
Bureau of Internal Revenue.

CNK-jh 5-1-39

78

Motion for Consolidation.

UNITED STATES BOARD OF TAX APPEALS. 79

Docket No. 94755.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Cordelia Y. Abendroth, Deceased,
Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 97857. 80

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, Deceased,
Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Now come the petitioners in the above-entitled cases, by their undersigned counsel, and respectfully show that the sole question at issue is the same in both of said cases, 81 namely, whether interest and dividends received by the estate between the date of the decedent's death and the optional valuation date provided by Section 302 (j) of the Revenue Act of 1926, as added by Section 202 (..) of the Revenue Act of 1935, are required by said statute to be included in the decedent's gross estate for the purposes of the Federal estate tax. The petitioners show that the issue in said cases is one of law and not of fact; that counsel for the petitioners are the same in both cases; that said case having Docket No. 94755, involving the

82 estate tax on the estate of Cordelia Y. Abendroth, deceased, has been placed on the Board's circuit calendar for hearing in New York City on September 25, 1939, but that said case having Docket No. 97857, involving the estate tax on the estate of Kate Read Blacque, deceased, has not been set for hearing. The petitioners allege that it should result in much saving of time to the Board and counsel for both parties if said cases should be consolidated and heard at the same time.

Petitioners therefore move that said case having Docket No. 97857, involving the estate tax on the estate of Kate Read Blacque, deceased, be placed on the Board's circuit
83 calendar for hearing in New York City on September 25, 1939, and that the above-entitled cases be consolidated for hearing.

Dated August 16, 1939.

THOMAS K. EGAN, JR.,
GEORGE CRAVEN,
Counsel for Petitioners,
20 Exchange Place,
New York, N. Y.

MITCHELL, TAYLOR, CAPRON & MARSH,
20 Exchange Place,
New York, N. Y.
84 Of Counsel.

GRANTED

Consolidation and for hearing
New York City, Sept. 25, 1939

AUG 19 1939

(s) CHARLES P. SMITH
Member.

U. S. Board of Tax Appeals

Stipulation of Facts.

85

UNITED STATES BOARD OF TAX APPEALS.

Docket No. 94755.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Cordelia Y. Abendroth, Deceased,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

86

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, by their respective counsel of record, that the following facts may be considered as true without further proof, subject to the right of either party to object on grounds of materiality and relevancy, and to the right of either party to introduce further evidence not inconsistent herewith:

1. City Bank Farmers Trust Company is a corporation duly organized under the banking laws of the State of New York and is engaged in said state in the business of a trust company with its principal office and place of business at 22 William Street, New York, N. Y.

87

2. Cordelia Y. Abendroth, hereinafter referred to as the "decedent" died on October 9, 1936, a citizen of the United States, residing at Harrison, Westchester County, New York. The decedent left a last will and testament bearing date March 20, 1923, and a codicil thereto bearing date January 28, 1932, which were duly admitted to probate by the Surrogate's Court of Westchester County,

88 New York, on October 16, 1936. On the last mentioned date letters testamentary were duly issued by said court to said City Bank Farmers Trust Company, the executor named in said will, which since said date has been and is now the duly appointed, qualified and acting executor of said last will and testament, and which as such executor is the petitioner herein.

3. The Federal estate tax return of the estate of the decedent was filed by the petitioner on November 24, 1937 with the Collector of Internal Revenue for the Fourteenth District of New York.

89 4. The taxes in controversy are Federal estate taxes of the said estate. On June 25, 1938, the Commissioner of Internal Revenue mailed a notice of deficiency to the petitioner, in which a deficiency in estate taxes of $432.83 was determined.

5. The petitioner elected upon the aforesaid return to have the gross estate valued at the optional valuation dates provided by Section 302(j) of the Revenue Act of 1926, as added by Section 202(a) of the Revenue Act of 1935.

90 6. Exhibit "A", attached hereto and hereby made a part hereof, is a true and correct copy of Schedule B of the aforesaid estate tax return, with certain minor exceptions not relevant hereto, and with the exception of the various footnote references and footnotes appearing therein, and the parties hereby stipulate that the information contained therein is correct. Said Exhibit "A" contains all of the stocks and bonds which should have been included, and were included, in the aforesaid estate tax return.

The values of the bonds shown in said Exhibit "A"

are exclusive of any value representing the right to interest accrued and unpaid thereon at the date of death and the optional valuation dates, respectively, and interest paid thereon prior to those dates, but are inclusive of any value representing the right inhering in the ownership of said bonds to interest accruing thereon after said dates. The values of the stocks shown in said Exhibit "A" are exclusive of any value representing the right to dividends declared and payable to stockholders of record on dates prior to the date of death and the optional valuation dates, respectively, but unpaid on said dates (i. e., "ex dividend"), and dividends paid thereon prior to those dates, but are inclusive of any value representing the right inhering in the ownership of said stock to dividends payable to stockholders of record on dates subsequent to those dates. 91 92

The stipulation in this paragraph is made without prejudice to the right of the respondent to contend that the items of interest shown in said Exhibit "A" as having accrued between the date of death and up to and including the respective optional valuation dates, whether paid or unpaid during that period, and the items of dividends shown in said Exhibit "A" as being payable to stockholders of record after the date of death and to and including the respective optional valuation dates, whether paid or unpaid during that period, should be included in the gross estate for estate tax purposes, and without prejudice to the right of the petitioner to contend that said items should not be so included. 93

7. The petitioner included in said gross estate in said return all income accrued to the date of said decedent's death, consisting of interest accrued but not due amounting to $379.09 on bonds owned by the decedent at the date of her death, and dividends of $206.25 on stocks owned by the decedent at the date of her death which were pay-

94 able to stockholders of record as of a date prior to her death, making a total of $585.34 so included. The said interest and dividends amounting to $585.34 were reported and included in the gross estate for estate tax purposes at their face value, and are not in dispute.

8. During the one-year period after the date of decedent's death, her estate received in cash: (1) interest of $1,417.70 which accrued after the date of her death on bonds owned by her at the date of her death and retained by her estate until the expiration of one year after her death; (2) interest of $60.77 which accrued after the date
95 of her death on bonds owned by the decedent at the date of her death and sold or redeemed within one year after said date and which was paid by the purchaser or on redemption; and (3) dividends of $1,829.40 on stocks owned by her at the date of her death which were payable to stockholders of record as of a date subsequent to the date of her death. In addition thereto, on the date one year after the decedent's death, i. e., October 9, 1937, there was interest accrued but not due of $314.79 which had accrued after the date of decedent's death on bonds owned by her at the date of her death, and there were dividends of $161.25 declared on stocks owned by the decedent at the date of her death which were payable subse-
96 quent to October 9, 1937 to stockholders of record as of a date prior to said date. The said five items of interest and dividends amounting to $3,783.91 were included by the petitioner in said estate tax return for purposes of information, but were not included by the petitioner in the gross estate for estate tax purposes. The said dividends referred to in this paragraph amounting to $1,990.65 were ordinary dividends and were not extraordinary or liquidating dividends, and were declared and paid or payable out of current earnings of the paying

corporations or out of accumulated earnings of the paying corporations for years prior to the date of death. 97

9. The Commissioner in the notice of deficiency determined that the aforesaid items of interest and dividends, amounting to $3,783.91, should be included in the gross estate of the decedent for estate tax purposes, and the question at issue is whether such items are subject to the estate tax.

10. The gross estate of the decedent, excluding said items aggregating $3,783.91, has a value for estate tax purposes of $92,915.27, determined as of the optional valuation date provided by Section 302(j) of the Revenue Act of 1926, as added by Section 202(a) of the Revenue Act of 1935. The deductions other than the specific exemption amount to $5,215.69, and the net estate for estate tax purposes, excluding said items of $3,783.91, amounts to $47,699.58. If the said items of $3,783.91 are properly includible in said gross estate, the values of said gross estate and said net estate should be increased in the said amount of $3,783.91. 98

Dated: September 28, 1939.

ROLLIN BROWNE,
GEORGE CRAVEN,
Counsel for Petitioner. 99

J. P. WENCHEL,
Chief Counsel for Bureau of
Internal Revenue,
Counsel for Respondent.

EXHIBIT A, ANNEXED TO STIPULATION OF FACTS.

100 STOCKS AND BONDS

Item	Subsequent Valuation Date	Value Under Option	Value as of Date of Death
1. 45 shares, American Telephone & Telegraph Company, capital $100. par, at 179-1/8* on date of death,, at 157-3/8* on October 9, 1937. Not disposed of within year following death	10/ 9/37	$7,081.88*	$8,060.63*
Dividend paid 10/15/36	10/15/36	101.25**	101.25**
Dividend paid 1/15/37	1/15/37	101.25***	
Dividend paid 4/14/37	4/15/37	101.25***	
Dividend paid 7/15/37	7/15/37	101.25***	
101 Dividend payable 10/15/37	10/15/37	101.25****	
2. 40 shares, American Tobacco Company, common Class "B" $50. par, at 201-1/2 on date of death. (Received 80 shares par $25. in exchange) 80 shares at 74-1/2 on October 9, 1937. Not disposed of within year following death	10/ 9/37	5,960.00	8,060.00
Dividend paid 12/1/36	12/ 1/36	100.00***	
Dividend paid 3/1/37	3/ 1/37	100.00***	
Dividend on 6/1/37	6/ 1/37	100.00***	
Dividend on 9/1/37	9/ 1/37	100.00***	
3. 192 shares, 1st National Bank & Trust Company, Portchester, N.			
102 Y., capital $20. par, at 14 on date of death. At 13 on October 9, 1937. Not disposed of within year following death	10/ 9/37	2,496.00	2,688.00
4. 100 shares, North American Company, common $10. par 33-3/8 on date of death at 19-1/4 on October 9, 1937. Not disposed of within year following death	10/ 9/37	1,925.00	3,337.50
Dividend paid 12/16/36	12/16/36	50.00***	
Dividend paid 4/ 1/37	4/ 1/37	30.00***	
Dividend paid 7/ 1/37	7/ 1/37	30.00***	
Dividend paid 10/ 1/37	10/ 1/37	30.00***	

Exhibit A, Annexed to Stipulation of Facts.

em	Subsequent Valuation Date	Value Under Option	Value as of Date of Death	103
15 shares, Radio Corporation of America, Common no par, at 10-7/8 on date of death. At 8-7/8 on October 9, 1937. Not disposed of within year following death	10/ 9/37	133.13	163.13	
50 shares, Union Pacific Railroad Company, common $100. par, at 139 on date of death. At 98-1/8 on October 9, 1937. Not disposed of within year following death	10/ 9/37	4,906.25	6,950.00	104
Dividend paid 1/1/37	1/ 1/37	75.00***		
Dividend paid 4/1/37	4/ 1/37	75.00***		
Dividend paid 7/1/37	7/ 1/37	75.00***		
Dividend paid 10/1/37	10/ 1/37	75.00***		
30 shares, Westinghouse Electric & Manufacturing Company 7% Cumulative Preferred $50. par, at 156-1/4 on date of death. At 126 on October 9, 1937. Not disposed of within year following death	10/ 9/37	3,780.00	4,687.50	
Dividend paid 12/ 4/36	12/ 4/36	26.25***		
Dividend paid 12/24/36	12/24/36	60.00***		
Dividend paid 2/26/37	2/26/37	30.00***		
Dividend paid 5/31/37	5/31/37	30.00***		105
Dividend paid 8/31/37	8/31/37	30.00***		
$1,000. Chicago Rock Island & Pacific Railway Company, 1st and Refunding, due April 1, 1934, interest 4%, at 19-3/4 flat on date of death. At 16-1/2 less brokerage and tax on December 18, 1936 date of sale by Executor	12/18/36	162.09	197.50	

Exhibit A, Annexed to Stipulation of Facts.

106

Item	Subsequent Valuation Date	Value Under Option	Value as of Date of Death
9. $2,000. Chicago Rock Island & Pacific Railway Company, 1st & Refunding, due April 1, 1934, interest 4%, at 19-3/4 flat on date of death. At 10-1/4 flat on October 9, 1937. Not disposed of within year following death	10/ 9/37	205.00	395.00
10. $1,000. Central Pacific Railway Company, 25 year Guaranteed, due August 1, 1960, interest 5% payable February and August 1,			
107 at 101-7/8 on date of death. At 102-7/8 less brokerage and tax on December 15, 1936 date of sale by Executor	12/15/36	1,025.82	1,018.75
Interest accrued from August 1, 1936 thru date of death			9.58x
Interest accrued from August 1, 1936 to December 15, 1936	12/15/36	9.03xx	
11. $2,000. Central Pacific Railway Company 25 year Guaranteed, due August 1, 1960, interest 5% payable February and August 1, at 101-7/8 on date of death. At 80 on October 9, 1937. Not dis-			
108 posed of within year following death	10/ 9/37	1,600.00	2,037.50
Interest accrued thru date of death			19.17x
Interest paid 2/1/37	2/ 1/37	30.83xxx	
Interest paid 8/1/37	8/ 1/37	50.00xxx	
Interest accrued from August 1 thru October 9, 1937	10/ 9/37	19.17xxxx	
12. $4,000. Cincinnati Gas & Electric Company, 1st Mortgage, due August 1, 1966, interest 3-1/4% payable February and August 1, at 102-3/4 on date of death. At 100-3/4 on October 9, 1937. Not			

Exhibit A, Annexed to Stipulation of Facts.

Item	Subsequent Valuation Date	Value Under Option	Value as of Date of Death	
disposed of within year following death	10/ 9/37	4,030.00	4,110.00	109
Interest accrued thru date of death			24.92x	
Interest paid 2/1/37	2/ 1/37	40.08xxx		
Interest paid 8/1/37	8/ 1/37	65.00xxx		
Interest accrued from August 1 thru October 9, 1937	10/ 9/37	24.92xxxx		
13. $1,000. Commonwealth Edison Company, 1st Mortgage F, due March 1, 1981, interest 4% payable March and September 1, at 107-3/8 on date of death. At 107-1/2 less brokerage and tax on December 16, 1936 date of sale by Executor	12/16/36	1,072.07	1,073.75	110
Interest accrued thru date of death			4.33x	
Interest accrued from September 1 to December 16, 1936	12/16/36	7.23xx		
14. $2,000. Commonwealth Edison Company, 1st Mortgage F, due March 1, 1981, interest 4% payable March and September 1, at 107-3/8 on date of death. At 106-3/8 on October 9, 1937. Not disposed of within year following death	10/ 9/37	2,127.50	2,147.50	111
Interest accrued thru date of death			8.67x	
Interest paid March 1, 1937	3/ 1/37	31.33xxx		
Interest paid September 1, 1937	9/ 1/37	40.00xxx		
Interest accrued from September 1 thru October 9, 1937	10/ 9/37	8.67xxxx		
15. $1,000. Consolidated Gas, Electric Light & Power of Baltimore 1st Refunding, due June 1, 1981, interest 4% payable June and December 1, at 105-3/4 on date of death. At 104 on March 6, 1937 date redeemed by Executor	3/ 6/37	1,046.08	1,057.50	

Exhibit A, Annexed to Stipulation of Facts.

Item	Subsequent Valuation Date	Value Under Option	Value as of Date of Death
Interest accrued thru date of death			14.33x
Interest paid 12/1/36	12/ 1/36	5.67xxx	
Interest accrued from December 1, 1936 to February 10, 1937 date called	2/10/37	6.50xx	
16. $2,000. Duquesne Light Company 1st Mortgage, due June 1, 1965, interest 3-1/2% payable January and December 1, at 108-1/4 on date of death. At 105-3/4 on October 9, 1937. Not disposed of			
113 within year following death	10/ 9/37	2,115.00	2,165.00
Interest accrued thru date of death			25.08x
Interest paid December 1, 1936	12/ 1/36	9.92xxx	
Interest paid June 1, 1937	6/ 1/37	35.00xxx	
Interest accrued from June 1 thru October 9, 1937	10/ 9/37	25.08xxxx	
17. $2,000. Idaho Irrigation Company, Ltd. Adjustment Mortgage, 6s, due January 1, 1928, worthless		—0—	—0—
18. $2,000. Illinois Central Railroad Company, 40 year, due August 1, 1966, interest 4-3/4% payable February and August 1, at 84-3/4 on date of death. At			
114 50-1/2 on October 9, 1937. Not disposed of within year following death	10/ 9/37	1,010.00	1,695.00
Interest accrued thru date of death			18.21x
Interest paid 2/1/37	2/ 1/37	29.29xxx	
Interest paid 8/1/37	8/ 1/37	47.50xxx	
Interest accrued from August 1 thru October 9, 1937	10/ 9/37	18.21xxxx	
19. $1,000. Illinois Steel Company, Debenture Guaranteed, due April 1, 1940, interest 4-1/2% payable April and October 1, at 107-3/4 on date of death. At 106-5/8			

Exhibit A, Annexed to Stipulation of Facts.

Item	Subsequent Valuation Date	Value Under Option	Value as of Date of Death	
less brokerage and tax, on December 15, 1936 date of sale by Executor	12/15/36	1,063.32	1,077.50	115
Interest accrued thru date of death			1.12x	
Interest accrued from October 1 to December 15, 1936	12/15/36	8.13xx		
20. $2,000. Illinois Steel Company, Debenture Guaranteed, due April 1, 1940, interest 4-1/2% payable April and October 1, at 107-3/4 on date of death at 107-1/8 on October 9, 1937. Not disposed of within year following death	10/ 9/37	2,142.50	2,155.00	116
Interest accrued thru date of death			2.26x	
Interest paid 4/1/37	4/ 1/37	42.74xxx		
Interest paid 10/1/37	10/ 1/37	45.00xxx		
Interest accrued from 10/1 thru 10/9/37	10/ 9/37	2.26xxxx		
21. $2,000. Kansas City Railways Company, 2nd and Sinking Fund Series A 6s, due July 7, 1944, worthless		—0—	—0—	
22. $4,000. Louisville & Nashville Railroad Company, 1st and Refunding Series D, due 2003, interest 4% payable April and October 1, at 102-1/2 on date of death. At 93-1/4 on October 9, 1937. Not disposed of within year following death	10/ 9/37	3,730.00	4,100.00	117
Interest accrued thru date of death			4.00x	
Interest paid 4/1/37	4/ 1/37	76.00xxx		
Interest paid 10/1/37	10/ 1/37	80.00xxx		
Interest accrued from 10/1 thru 10/9/37	10/ 9/37	4.00xxxx		

Exhibit A, Annexed to Stipulation of Facts.

Item	Subsequent Valuation Date	Value Under Option	Value as of Date of Death
118			
23. $2,000. New Orleans Terminal Company, 1st Mortgage Series A, due July 1, 1953, interest 4% payable January and July 1, at 98-1/4 on date of death. At 87 on October 9, 1937. Not disposed of within year following death	10/ 9/37	1,740.00	1,965.00
Interest accrued thru date of death			22.00x
Interest paid 1/1/37	1/ 1/37	18.00xxx	
Interest paid 7/1/37	7/ 1/37	40.00xxx	
119 Interest accrued from 7/1 thru 10/9/37	10/ 9/37	22.00xxxx	
24. $1,000. New York Central & Hudson River Railroad Company, Lake Shore Collateral, due February 1, 1998, interest 3-1/2% payable February and August 1, at 96-7/8 on date of death. At 98-1/4 less brokerage and tax on November 17, 1936 date of sale by executor	11/ 7/36	979.58	968.75
Interest accrued thru date of death			6.71x
Interest accrued from 8/1/36 to 11/17/36	11/17/36	3.60xx	
120 25. $2,000. New York Central & Hudson River Railroad Company, Lake Shore Collateral, due February 1, 1998, interest 3-1/2% payable February and August 1, at 96-7/8 on date of death. At 86-5/8 on October 9, 1937. Not disposed of within year following death	10/ 9/37	1,732.50	1,937.50
Interest accrued thru date of death			13.42x
Interest paid 2/1/37	2/ 1/37	21.58xxx	
Interest paid 8/1/37	8/ 1/37	35.00xxx	
Interest accrued from 8/1 thru 10/9/37	10/ 9/37	13.42xxxx	

Exhibit A, Annexed to Stipulation of Facts.

Item	Subsequent Valuation Date	Value Under Option	Value as of Date of Death	
$1,000. New York, New Haven & Hartford Railroad Company, Debenture, due April 1, 1954, interest 3-1/2% payable April and October 1, at 32-5/8 flat on date of death. At 32-1/2 flat less brokerage and tax on December 16, 1936 date of sale by Executor	12/16/36	322.09	326.25	121
$2,000. New York, New Haven & Hartford Railroad Company, Debenture, due April 1, 1954, interest 3-1/2% payable April and October 1, at 32-5/8 on date of death. At 21-7/8 flat on October 9, 1937. Not disposed of within year following death	10/ 9/37	437.50	652.50	122
Interest paid 1/15/37	1/15/37	17.50xxx		
$1,000. Niagara Falls Power Company, 1st and Refunding, due March 1, 1966, interest 3-1/2% payable March and September 1, at 106-7/8 on date of death. At 109 less tax on December 15, 1936 date of sale by Executor	12/15/36	1,089.60	1,068.75	
Interest accrued thru date of death			3.79x	
Interest accrued from 9/1 to 12/15/36	12/15/36	6.32xx		123
$4,000. Niagara Falls Power Company, 1st and Refunding, due March 1, 1966, interest 3-1/2% payable March and September 1, at 106-7/8 on date of death. At 103-3/4 on October 9, 1937. Not disposed of within year following death	10/ 9/37	4,150.00	4,275.00	
Interest accrued thru date of death			15.17x	
Interest paid 3/1/37	3/ 1/37	54.83xxx		
Interest paid 9/1/37	9/ 1/37	70.00xxx		
Interest accrued from 9/1 thru 10/9/37	10/ 9/37	15.17xxxx		

Exhibit A, Annexed to Stipulation of Facts.

Item	Subsequent Valuation Date	Value Under Option	Value as of Date of Death
124			
30. $1,000. Oregon Washington Railroad and Navigation Company, 1st and Refunding Series A, Guaranteed, due January 1, 1961, interest 4% payable January and July 1, at 107-3/8 on date of death. At 107 less brokerage and tax on December 15, 1936 date of sale by Executor	12/15/36	1,067.07	1,073.75
Interest accrued thru date of death			11.00
Interest accrued from July 1 to December 14, 1936	12/15/36	7.22xx	
125			
31. $2,000. Oregon Washington Railroad and Navigation Company, 1st and Refunding Series A, Guaranteed, due January 1, 1961, interest 4% payable January and July 1, at 107-3/8 on date of death. At 106-1/2 on October 9, 1937. Not disposed of within year following death	10/ 9/37	2,130.00	2,147.50
Interest accrued thru date of death			22.00
Interest paid 1/1/37	1/ 1/37	18.00xxx	
Interest paid 7/1/37	7/ 1/37	40.00xxx	
Interest accrued from 7/1 thru 10/9/37	10/ 9/37	22.00xxxx	
126			
32. $2,000. Pacific Light & Power Company, 1st Mortgage, due July 1, 1942 interest 5% payable January and July 1, at 117-1/8 on date of death. At 112-1/4 on October 9, 1937. Not disposed of within year following death	10/ 9/37	2,245.00	2,342.50
Interest accrued thru date of death			27.50
Interest paid 1/1/37	1/ 1/37	22.50xxx	
Interest paid 7/1/37	7/ 1/37	50.00xxx	
Interest accrued from 7/1 thru 10/9/37	10/ 9/37	27.50xxxx	

Exhibit A, Annexed to Stipulation of Facts.

Item	Subsequent Valuation Date	Value Under Option	Value as of Date of Death	127
3. $1,000. Pennsylvania Ohio & Detroit Railroad Company, 1st and Refunding Series A, due April 1, 1977, interest 4-1/2% payable April and October 1, at 104-3/4 on date of death. At 104 less brokerage and tax on December 15, 1936 date of sale by Executor	12/15/36	1,037.07	1,047.50	
Interest accrued thru date of death			1.13x	
Interest accrued from 10/1 to 12/15/36	12/15/36	8.12xx		
4. $2,000. Pennsylvania Ohio & Detroit Railroad Company, 1st and Refunding Series A, due April 1, 1977, interest 4-1/2% payable April and October 1, at 104-3/4 on date of death. At 104-1/2 on October 9, 1937. Not disposed of within year following death	10/ 9/37	2,090.00	2,095.00	128
Interest accrued thru date of death			2.25x	
Interest paid 4/1/37	4/ 1/37	42.75xxx		
Interest paid 10/1/37	10/ 1/37	45.00xxx		
Interest accrued from October 1, thru October 9, 1937	10/ 9/37	2.25xxxx		
5. $1,000. St. Louis Iron Mountain & Southern Railway Company, River and Gulf Divisions, 1st, stamped, due May 1, 1933, interest 4% payable May and November 1, at 86-5/8 flat on date of death. At 70-1/8 flat on October 9, 1937. Not disposed of within year following death.	12/15/36	832.08	866.25	129
Interest paid 11/1/36	11/ 1/36	20.00xxx		
6. $2,000. St. Louis Iron Mountain & Southern Railway Company, River and Gulf Divisions, 1st, stamped, due May 1, 1933, in-				

Exhibit A, Annexed to Stipulation of Facts.

Item		Subsequent Valuation Date	Value Under Option	Value as of Date of Death
	terest 4% payable May and November 1, at 86-5/8 flat on date of death. At 70-1/8 flat on October 9, 1937. Not disposed of within year following death	10/ 9/37	1,402.50	1,732.50
	Interest paid November 1, 1936	11/ 1/36	40.00xxx	
	Interest paid May 1, 1937.	5/ 1/37	40.00xxx	
37.	$2,000. Southern Railway Company, 1st Consolidated Mortgage, due July 1, 1994, interest 5% payable January and July 1, at 111 on date of death. At 96 on October 9, 1937. Not disposed of within year following death	10/ 9/37	1,920.00	2,220.00
	Interest accrued thru date of death			27.50x
	Interest paid 1/1/37	1/ 1/37	22.50xxx	
	Interest paid 7/1/37	7/ 1/37	50.00xxx	
	Interest accrued from 7/1 thru 10/9/37	10/ 9/37	27.50xxxx	
38.	$1,000. Texas Corporation, Debenture, due June 15, 1951, interest 3-1/2% payable June and December 15, at 103-7/8 on date of death. At 105-1/2 flat less tax on December 16, 1936 date of sale by Executor	12/16/36	1,054.60	1,038.75
	Interest accrued thru date of death			11.18x
	Interest paid 12/15/36	12/15/36	6.32xxx	
39.	$4,000. Texas Corporation Debenture, due June 15, 1951, interest 3-1/2% payable June and December 15, at 103-7/8 on date of death. At 103-7/8 on October 9, 1937. Not disposed of within year following death	10/ 9/37	4,155.00	4,155.00
	Interest accrued thru date of death			44.72x
	Interest paid 12/15/36	12/15/36	25.28xxx	
	Interest paid 6/15/37	6/15/37	70.00xxx	
	Interest accrued from 6/15 thru 10/9/37	10/ 9/37	44.72xxxx	

Exhibit A, Annexed to Stipulation of Facts.

	Subsequent Valuation Date	Value Under Option	Value as of Date of Death	133
$2,400. United States of America Treasury, due April 15, 1946, interest 3-1/4% payable April and October 15, at 108-9/32 on date of death. At 106-10/32 on October 9, 1937. Not disposed of within year following death	10/ 9/37	2,551.50	2,598.75	
Interest accrued thru date of death			37.92x	
Interest paid October 15, 1936	10/14/36	1.18xxx		
Interest paid April 15, 1937	4/15/37	38.90xxx		
Interest accrued from 4/15 thru 10/9/37	10/ 9/37	37.92xxxx		134
40 shares, American Gas & Electric Company, $6. cumulative preferred, no par, at 111* on date of death. At 106-3/4* on October 9, 1937. Not disposed of within year following death	10/ 9/37	4,270.00*	4,440.00*	
Dividend paid 11/2/36	11/ 2/36	60.00**	60.00**	
Dividend paid 2/2/37	2/ 2/37	60.00***		
Dividend paid 5/2/37	5/ 2/37	60.00***		
Dividend paid 8/2/37	8/ 2/37	60.00***		
Dividend payable 11/2/37	11/ 2/37	60.00****		
30 shares, Columbia Gas & Electric Corporation, 6% cumulative preferred Class A, at 108-1/2* on date of death. At 78-7/8 on October 9, 1937. Not disposed of within year following death	10/ 9/37	2,366.25	3,210.00*	135
Dividend paid 11/15/36	11/15/36	45.00**	45.00**	
Dividend paid 2/15/37	2/15/37	45.00***		
Dividend paid 5/15/37	5/15/37	45.00***		
Dividend paid 8/15/37	8/15/37	45.00***		
1 share, Commonwealth & Southern Corporation, $6. cumulative preferred no par, at 78-1/8 on date of death. At 69-1/8 less brokerage and tax on November 17, 1936 date of sale by Executor	11/17/36	68.03	78.13	

Exhibit A, Annexed to Stipulation of Facts.

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Item	Subsequent Valuation Date	Value Under Option	Value as of Date of Death
44. 24 shares, Commonwealth & Southern Corporation, $6. cumulative preferred no par, at 78-1/8 on date of death. At 41-3/4 on October 9, 1937. Not disposed of within year following death	10/ 9/37	1,002.00	1,875.00
Dividend paid 1/1/37	1/ 1/37	18.00***	
Dividend paid 4/1/37	4/ 1/37	18.00***	
Dividend paid 7/1/37	7/ 1/37	18.00***	
Dividend paid 10/1/37	10/ 1/37	18.00***	
45. 130 shares, First National Bank & Trust Company, Portchester, New York, common $10. par, at 14 on date of death. At 13 on 10/9/37. Not disposed of within year following death	10/ 9/37	1,690.00	1,820.00
46. 250 shares, Hortense Mining Company, capital $10. par, worthless	10/ 9/37	—0—	—0—
47. 40 shares, New York Chicago & St. Louis Railroad Company Cumulative preferred, Class A, $100. par, at 90-3/8 on date of death. At 52-5/8 on October 9, 1937. Not disposed of within year following death	10/ 9/37	2,105.00	3,615.00
138 48. 48 shares, Standard Oil Company of Indiana, capital $25. par, at 39-1/8 on date of death. At 37-5/8 on October 9, 1937. Not disposed of within year following death	10/ 9/37	1,806.00	1,878.00
Dividend paid 12/15/36	12/15/36	60.00***	
Dividend paid 3/15/37	3/15/37	19.20***	
Dividend paid 6/15/37	6/15/37	19.20***	
Dividend paid 9/15/37	9/15/37	24.00***	
49. 500 shares, Wyoming Irrigation Company, Inc., Capital $1. par, Worthless	10/ 9/37	—0—	—0—

Exhibit A, Annexed to Stipulation of Facts.

Item	Subsequent Valuation Date	Value Under Option	Value as of Date of Death
50. $1,000. New York Central & Hudson River Railroad Co., Refunding and Improvement, due October 1, 2013, interest 4-1/2% payable April and October 1, at 95-3/8 on date of death. At 94-7/8 less brokerage and tax on 11/17/36 date of sale by Executor	11/17/36	945.83	953.75
Interest accrued thru date of death			1.13x
Interest accrued from 10/1 to 11/17/36	11/17/36	4.62xx	
Less: Cash overdraft	$2,035.29		
Dividends declared and interest earned between date of death and subsequent valuation date under option	3,783.91	5,819.20	

The following note appears at the end of Schedule B of the Estate Tax Return. The respondent does not agree to the correctness of the statements therein contained:

> The items represented by the latter figure to wit $3,783.91 are returned in this schedule for information purposes only and in the form required by Regulations 80, 1937 Edition. They are not included in the gross estate for the reason that the Revenue Act of 1926, as amended, and specifically 302 J thereof added by Section 202 of the Revenue Act of 1935 does not require the inclusion of said items and the provisions of Regulation 80, 1937 Edition, which purport to require their inclusion are contrary to the express provisions of the said Revenue Act, as amended.

* These quotations are "ex dividend".
** Dividend declared before date of death and payable to stockholders of record before date of death.
*** Dividend payable and paid after date of death and before optional valuation date to stockholders of record after date of death.
**** Dividend payable after optional valuation date to stockholders of record after date of death and before optional valuation date.
x Interest accrued but not due at date of death.
xx Interest accrued after date of death to optional valuation date. Not due at latter date but collected from purchaser on sale or from obligor on redemption.
xxx Interest accrued and paid after date of death and before optional valuation date.
xxxx Interest accrued after date of death to optional valuation date but not due at latter date.
The term "dividend reflected" means that a dividend had been declared prior to the date shown but was payable to stockholders of record on a subsequent date.

Stipulation of Facts.

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UNITED STATES BOARD OF TAX APPEALS.

Docket No. 97857.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, Deceased,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

143 Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, by their respective counsel of record, that the following facts may be considered as true without further proof, subject to the right of either party to object on grounds of materiality and relevancy, and to the right of either party to introduce further evidence not inconsistent herewith:

1. City Bank Farmers Trust Company is a corporation duly organized under the banking laws of the State
144 of New York and is engaged in said state in the business of a trust company with its principal office and place of business at 22 William Street, New York, N. Y.

2. Kate Read Blacque, hereinafter referred to as the "decedent" died on April 3, 1937, a citizen of the United States, residing in the City, County and State of New York. The decedent left a last will and testament bearing date June 30, 1936, which was duly admitted to probate by the Surrogate's Court of New York County, New York, on April 27, 1937. On the last mentioned date

letters testamentary were duly issued by said court to 145
City Bank Farmers Trust Company, the executor named in said will, which since said date has been and is now the duly appointed, qualified and acting executor of said last will and testament, and which as such executor is the petitioner herein.

3. The Federal estate tax return of the estate of the decedent was filed by the petitioner on July 1, 1938, with the Collector of Internal Revenue for the Second District of New York.

4. The taxes in controversy are Federal estate taxes 146
of the said estate. On April 3, 1939, the Commissioner of Internal Revenue mailed a notice of deficiency to the petitioner, in which a deficiency in estate taxes of $13,996.28 was determined.

5. The petitioner elected upon the aforesaid return to have the gross estate valued at the optional valuation dates provided by Section 302(j) of the Revenue Act of 1926, as added by Section 202(a) of the Revenue Act of 1935.

6. Exhibit "A", attached hereto and hereby made a part hereof, is a true and correct copy of Schedule B 147
of the aforesaid estate tax return, with certain minor exceptions not relevant hereto, and with the exception of the various footnote references and footnotes appearing therein, and the parties hereby stipulate that the information contained therein is correct. Said Exhibit "A" contains all of the stocks and bonds which should have been included, and were included, in the aforesaid estate tax return.

The values of the bonds shown in said Exhibit "A" are exclusive of any value representing the right to interest

148 accrued and unpaid thereon at the date of death and the optional valuation dates, respectively, and interest paid thereon prior to those dates, but are inclusive of any value representing the right inhering in the ownership of said bonds to interest accruing thereon after said dates. The values of the stocks shown in said Exhibit "A" are exclusive of any value representing the right to dividends declared and payable to stockholders of record on dates prior to the date of death and the optional valuation dates, respectively, but unpaid on said dates (i. e., "ex dividend"), and dividends paid thereon prior to those dates, but are inclusive of any value representing
149 the right inhering in the ownership of said stock to dividends payable to stockholders of record on dates subsequent to those dates.

The stipulation in this paragraph is made without prejudice to the right of the respondent to contend that the items of interest shown in said Exhibit "A" as having accrued between the date of death and up to and including the respective optional valuation dates, whether paid or unpaid during that period, and the items of dividends shown in said Exhibit "A" as being payable to stockholders of record after the date of death and to and including the respective optional valuation dates, whether paid or unpaid during that period, should be included in
150 the gross estate for estate tax purposes, and without prejudice to the right of the petitioner to contend that said items should not be so included.

7. The petitioner included in said gross estate in said return all income accrued to the date of said decedent's death, consisting of interest accrued but not due amounting to $1,174.31 on bonds owned by the decedent at the date of her death, and dividends of $2,870.50 on stocks owned by the decedent at the date of her death which were payable to stockholders of record as of a date prior

to her death, making a total of $4,044.81 so included. 151
The said interest and dividends amounting to $4,044.81 were reported and included in the gross estate for estate tax purposes at their face value, and are not in dispute.

8. During the one-year period after the date of decedent's death, her estate received in cash: (1) interest of $4,863.55 which accrued after the date of her death on bonds owned by her at the date of her death and retained by her estate until the expiration of one year after her death; (2) interest of $1,212.24 which accrued after the date of her death on bonds owned by the decedent at the date of her death and sold or redeemed within one 152
year after said date and which was paid by the purchaser or on redemption; and (3) dividends of $43,947.83 on stocks owned by her at the date of her death which were payable to stockholders of record as of a date subsequent to the date of her death. In addition thereto, on the date one year after the decedent's death, i. e., April 3, 1938, there was interest accrued but not due of $578.08 which had accrued after the date of decedent's death on bonds owned by her at the date of her death, and there were dividends of $3,262.75 declared on stocks owned by the decedent at the date of her death which were payable subsequent to April 3, 1938 to stockholders of record as of a date prior to said date. The said five items of in- 153
terest and dividends amounting to $53,864.45 (together with a stock dividend of $714.15 which the petitioner concedes for the reasons stated in footnote A to Exhibit A hereof is subject to tax as part of the decedent's gross estate and which is not in dispute here) were included by the petitioner in said estate tax return for purposes of information, but were not included by the petitioner in the gross estate for estate tax purposes. The said dividends referred to in this paragraph (other than said stock dividend) amounting to $47,210.58 were ordinary

154 dividends and were not extraordinary or liquidating dividends, and were declared and paid or payable out of current earnings of the paying corporations or out of accumulated earnings of the paying corporations for years prior to the date of death.

9. The Commissioner in the notice of deficiency determined that the aforesaid items of interest and dividends, amounting to $53,864.45 (and also said stock dividend of $714.15) should be included in the gross estate of the decedent for estate tax purposes, and the question at issue is whether such items are subject to the estate tax.

155 10. The gross estate of the decedent, excluding said items aggregating $53,864.45, has a value for estate tax purposes of $1,515,241.06, determined as of the optional valuation dates provided by Section 302(j) of the Revenue Act of 1926, as added by Section 202(a) of the Revenue Act of 1935. The deductions other than the specific exemption amount to $113,524.77; the net estate for the purpose of the estate tax imposed by the Revenue Act of 1926, excluding said items of $53,864.45, amounts to $1,301,716.29, and the net estate for the purpose of the estate tax imposed by the Revenue Act of 1932 as amended, excluding said items of $53,864.45, amounts to $1,361,716.29. If the said items of $53,864.45 are properly includible in
156 said gross estate, the values of said gross estate and said net estate should be increased in the said amount of $53,864.45.

Dated: September 28, 1939.

ROLLIN BROWNE,
GEORGE CRAVEN,
Counsel for Petitioner.

J. P. WENCHEL,
Chief Counsel for Bureau of
Internal Revenue,
Counsel for Respondent.

EXHIBIT A, ANNEXED TO STIPULATION OF FACTS.

STOCKS AND BONDS

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
1. $2,000. Adams Express Company Collateral Trust Distribution, due June 1, 1947, interest 4% payable June and December 1, at 100 on date of death. At 100⅛ less brokerage and tax on June 8, 1937 date of sale by Executor	6/ 8/37	$1,996.65	$2,000.00
Interest accrued thru date of death			27.33x
Interest paid June 1, 1937	6/ 1/37	12.67xxx	
Interest accrued to June 8, 1937	6/ 8/37	1.56xx	
2. $1,000. Adams Express Company, Collateral Trust 50 year, due March 1, 1948, interest 4% payable March and September 1, at 101 on date of death. At 101 less brokerage on June 8, 1937 date of sale by Executors	6/ 8/37	1,007.07	1,010.00
Interest accrued thru date of death			3.67x
Interest accrued to June 8, 1937	6/ 8/37	7.11xx	
3. $5,000. American Telephone & Telegraph Company, 20 year Sinking Fund, Debenture, due November 1, 1943, interest 5½% payable May and November 1, at 112¾ on date of death. At 112½ on April 3, 1938. Not disposed of within year following death	4/ 3/38	5,625.00	5,637.50
Interest accrued thru date of death			116.88x
Interest paid May 1, 1937	5/ 1/37	20.62xxx	
Interest paid November 1, 1937	11/ 1/37	137.50xxx	
Interest accrued to April 3, 1938	4/ 3/38	116.88xxxx	

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Exhibit A, Annexed to Stipulation of Facts.

		Subsequent Valuation Date	Value Under Option	Value on Date of Death
160	4. $10,000. Atchison, Topeka & Santa Fe Railway Company, General, due October 1, 1995, interest 4% payable April and October 1, at 106¼ on date of death. At 98⅝ on April 3, 1938. Not disposed of within year following death (Registered)	4/ 3/38	9,862.50	10,625.00
	Interest accrued thru date of death			3.33x
	Interest paid October 1, 1937	10/ 1/37	196.67xxx	
161	Interest paid April 1, 1938	4/ 1/38	200.00xxx	
	Interest accrued thru April 3, 1938	4/ 3/38	3.33xxxx	
	5. $10,000. Canadian National Railway Company, 25 year Guaranteed due June 15, 1955, interest 4¾% payable June and December 15, at 113⅛ on date of death. At 115½ less brokerage and tax on September 14, 1937 date of sale by Executor	9/14/37.	11,524.88	11,312.50
	Interest accrued thru date of death			143.82x
	Interest paid June 15, 1937	6/15/37	93.68xxx	
162	Interest accrued to September 14, 1937	9/14/37	117.44xx	
	6. $600. Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Refunding and Improvement Series C, due January 1, 1941, interest 6% payable January and July 1, at 103¼ on date of death. At 103 on July 1, 1937 date redeemed by Executor	7/ 1/37	618.00	619.50
	Interest accrued thru date of death			9.30x
	Interest paid July 1, 1937	7/ 1/37	8.70xx	

Exhibit A, Annexed to Stipulation of Facts.

	Subsequent Valuation Date	Value Under Option	Value on Date of Death	163
7. $20,000. Consolidated Federal Farm Loan, The Twelve Federal Land Banks, due May 1, 1955-45, interest 3¼% payable May and November 1, at 100¾ on date of death. At 101⅞ on April 3, 1938. Not disposed of within year following death	4/ 3/38	20,375.00	20,150.00	
Interest accrued thru date of death			276.25x	
Interest paid May 1, 1937	5/ 1/37	48.75xxx		
Interest paid November 1, 1937	11/ 1/37	325.00xxx		
Interest accrued thru April 3, 1938	4/ 3/38	276.25xxxx		164
8. $1,000. City of Detroit, Michigan, Public Sewer Refunding Series A, due January 1, 1957, interest 4¼% payable January and July 1, at 98½ on date of death. At 98¾ on August 18, 1937 date of sale by Executor	8/18/37	987.50	985.00	
Interest accrued thru date of death			10.98x	
Interest paid July 1, 1937	7/ 1/37	10.27xxx		
Interest accrued to August 18, 1937	8/18/37	5.55xx		
9. $10,000. City of Detroit, Michigan, Public Sewer Refunding Series A, due September 16, 1957, interest 4% payable March and September 15, at 98 on date of death. At 98½ on August 18, 1937 date of sale by Executor	8/18/37	9,850.00	9,800.00	165
Interest accrued thru date of death			21.11x	
Interest accrued to August 18, 1937		148.89xx		

Exhibit A, Annexed to Stipulation of Facts.

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
10. $200. Registered City of Detroit, Michigan, Refunding Series B, due August 1, 1962, interest 3¼% payable February and August 1, at 85½ on date of death. At 86 on August 18, 1937 date of sale by Executor	8/18/37	172.00	171.00
Interest accrued thru date of death			1.14x
Interest paid August 1, 1937	8/ 1/37	2.11xxx	
Interest accrued to August 18, 1937	8/18/37	.31xx	

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11. $355.03 Registered City of Detroit, Michigan Refunding Series C, due August 1, 1962, interest 3¼% payable August 1, at 85½ on date of death. At 86 on August 8, 1937 date of sale by Executor	8/18/37	305.33	303.55
Interest accrued thru date of death			7.79x
Interest paid August 1, 1937	8/ 1/37	3.75xxx	
Interest accrued to August 18, 1937	8/18/37	.54xx	

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12. $1,000. State of Illinois, Highway, due March 1, 1955, interest 4% payable March and September 1, at 112⅝ on date of death. At 122¾ on April 3, 1938. Not disposed of within year following death	4/ 3/38	1,227.50	1,126.25
Interest accrued thru date of death			3.67x
Interest paid September 1, 1937	9/ 1/37	16.33xxx	
Interest paid March 1, 1938	3/ 1/38	20.00x	
Interest accrued thru April 3, 1938	4/ 3/38	3.67xxxx	

Exhibit A, Annexed to Stipulation of Facts.

	Subsequent Valuation Date	Value Under Option	Value on Date of Death	
13. $5,000. State of Illinois, Highway, due March 1, 1957, interest 4% payable March and September 1, at 113¾ on date of death. At 124⅛ on April 3, 1938. Not disposed of within year following death	4/ 3/38	6,206.25	5,687.50	169
Interest accrued thru date of death			18.33x	
Interest paid September 1, 1937	9/ 1/37	81.67xxx		
Interest paid March 1, 1938	3/ 1/38	100.00xxx		
Interest accrued thru April 3, 1938	4/ 3/38	18.33xxxx		170
14. $5,000. City of Lansing, Michigan, Electric Light & Power, due January 2, 1947, interest 4½% payable January and July 2, at 113⅝ on date of death. At 114½ less brokerage on November 9, 1937 date of sale by Executor	11/ 9/37	5,712.50	5,681.25	
Interest accrued thru date of death			57.50x	
Interest paid July 2, 1937	7/ 2/37	55.00xxx		
Interest accrued to November 9, 1937	11/ 9/37	79.38xx		
15. $25,000. Liggett & Myers Tobacco Company, due October 1, 1944, interest 7% payable April and October 1, at 129⅞ on date of death. At 129 on April 3, 1938. Not disposed of within year following death	4/ 3/38	32,250.00	32,468.75	171
Interest accrued thru date of death			14.59x	
Interest paid October 1, 1937	10/ 1/37	860.41xxx		
Interest paid April 1, 1938	4/ 1/38	875.00xxx		
Interest accrued thru April 3, 1938	4/ 3/38	14.59xxxx		

Exhibit A, Annexed to Stipulation of Facts.

		Subsequent Valuation Date	Value Under Option	Value on Date of Death
172				
	16. $2,000. New Amsterdam Gas Company, 1st Consolidated Mortgage, due January 1, 1948, interest 5% payable January and July 1, at 113 on date of death. At 118¼ less brokerage and tax on July 13, 1937 date of sale by Executor	7/13/37	2,359.15	2,260.00
	Interest accrued thru date of death			25.83x
	Interest paid July 1, 1937	7/ 1/37	24.17xxx	
	Interest accrued to July 13, 1937	7/13/37	3.33xx	
173				
	17. $25,000. New York Central & Hudson River Railroad Company, Refunding and Improvement Series A, due 2013, interest 4½% payable April and October 1, at 90⅛ on date of death			22,531.25
	$15,000. at 89⅝, $10,000. at 89½ less brokerage and tax on July 14, 1937 date of sale by Executor	7/14/37	22,320.80	
	Interest accrued thru date of death			9.38x
	Interest accrued to July 14, 1937	7/14/37	312.50xx	
174				
	18. $1,000. New York, New Haven & Hartford Railroad Company, Convertible Debenture, due January 1, 1956, interest 3½% payable January and July 1, at 39½ flat on date of death. At 13¾ flat on April 3, 1938. Not disposed of within year following death	4/ 3/38	137.50	395.00
	19. $35,000. City of New York Corporate Stock, due March 1, 1964, interest 4¼% payable			

Exhibit A, Annexed to Stipulation of Facts.

	Subsequent Valuation Date	Value Under Option	Value on Date of Death	175
March and September 1, at 110¾ on date of death. At 112⅜ on April 3, 1938. Not disposed of within year following death	4/ 3/38	39,331.25	38,762.50	
Interest accrued thru date of death			136.36x	
Interest paid September 1, 1937	9/ 1/37	607.39xxx		
Interest paid March 1, 1938	3/ 1/38	743.75xxx		
Interest accrued thru April 3, 1938	4/ 3/38	136.36xxxx		
20. $2,000. City of Newark, N. J., School, due May 1, 1957-47, interest 4% payable May and November 1, at 101½ on date of death. At 98 on October 18, 1937 date of sale by Executor	10/18/37	1,960.00	2,030.00	176
Interest accrued thru date of death			34.00x	
Interest paid May 1, 1937	5/ 1/37	6.00xxx		
Interest accrued to October 18, 1937	10/18/37	37.11xx		
21. $1,000. City of Paterson, N. J., General Improvement, due October 1, 1941, interest 4½% payable April and October 1, at 102¾ on date of death. At 102 on September 15, 1937 date of sale by Executor	9/15/37	1,020.00	1,027.50	177
Interest accrued thru date of death			.38x	
Interest accrued to September 15, 1937	9/15/37	20.12xx		
22. $10,000. City of Paterson, N. J., School, due October 1, 1951, interest 4½% payable April and October 1, at 104½ on date of				

Exhibit A, Annexed to Stipulation of Facts.

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
death. At 102 on September 15, 1937 date of sale by Executor	9/15/37	10,350.00	10,450.00
Interest accrued thru date of death			3.75x
Interest accrued to September 15, 1937	9/15/37	201.25xx	
23. $3,000. Peoria & Western Railway Company, 1st Consolidated, due April 1, 1940, interest 4% payable April and			
179 October 1, at 94¼ on date of death. At 92½ less brokerage and tax on July 14, 1937 date of sale by Executor	7/14/37	2,766.24	2,827.50
Interest accrued thru date of death			1.00x
Interest accrued to July 14, 1937	7/14/37	33.33xx	
24. $5,000. City of Philadelphia, Pa. due October 16, 1976/46, interest 4¼% payable January and July 1, at 107½ on date of death. At 103½ less brokerage on November 9, 1937, date of sale by Executor	11/ 9/37	5,162.50	5,375.00
180 Interest accrued thru date of death			54.90x
Interest paid July 1, 1937	7/ 1/37	51.35xxx	
Interest accrued to November 9, 1937	11/ 9/37	75.56xx	
25. $5,000. Port of New York Authority Terminal Series D, due March 1, 1960, interest 4¼% payable March and September 1, at 106 on date of death. At 108⅛ less brokerage on July 13, 1937 date of sale by executor	7/13/37	5,393.75	5,300.00

Exhibit A, Annexed to Stipulation of Facts.

	Subsequent Valuation Date	Value Under Option	Value on Date of Death	
Interest accrued thru date of death			19.48x	181
Interest accrued to July 13, 1937	7/13/37	58.44xx		
26. $3,000. Wabash Railroad Company, 1st Mortgage, 50 year, due May 1st, 1939, interest 5% payable May and November 1, at 99½ on date of death			2,985.00	
$1,000. at 45 flat less brokerage and tax on March 29, 1938 date of sale by Executor	3/29/38	447.09		
$2,000. at 43¾ flat on April 3, 1938. Not disposed of within year following death	4/ 3/38	875.00		182
Interest accrued thru date of death			63.75x	
Interest paid to May 1, 1937 ($20. per each $25. coupon)	5/ 1/37			
Interest paid to November 1, 1937 ($20. per each $25. coupon)	11/ 1/37	56.25xxx		
27. $10,000. West Virginia, Road Construction, due January 1, 1939, interest 4¼% payable January and July 1, at 103½ on date of death. At 102¼ on April 3, 1938. Not disposed of within year following death	4/ 3/38	10,225.00	10,350.00	183
Interest accrued thru date of death			109.79x	
Interest paid July 1, 1937	7/ 1/37	102.71xxx		
Interest paid January 1, 1938	1/ 1/38	212.50xxx		
Interest accrued thru April 3, 1938	4/ 3/38	109.79xxxx		
28. 47 shares, Albany and Susquehanna Railroad Company, capital $100. par, at 182½ on date of death. At 174 less brokerage and tax on May 24, 1937 date of sale by Executor	5/24/37	8,162.02	8,577.50	

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
29. 2 shares, Allied Mills, Inc., common no par, at 26 on date of death. At 26⅞ less brokerage and tax on May 25, 1937 date of sale by Executor	5/25/37	52.56	52.00
30. 375 shares, American Can Company, 7% Cumulative preferred $100. par, at 155 on date of death.			58,125.00
75 shares at 155⅞ less brokerage and tax on June 9, 1937			
185 date of sale by Executor	6/ 9/37	11,664.89	
300 shares, at 160 less brokerage and tax on November 9, 1937 date of sale by Executor	11/ 9/37	47,897.04	
Dividend paid July 1, 1937	7/ 1/37	525.00***	
Dividend paid October 1, 1937	10/ 1/37	525.00***	
31. 50 shares, American Can Co., common $25. par, at 108 (dividend reflected) on date of death. At 96⅞ less brokerage and tax on June 8, 1937 date of sale by Executor	6/ 8/37	4,831.00	5,400.00
Dividend paid May 15, 1937	5/15/37	50.00***	
32. 50 shares, American Car & Foundry Company; 7% preferred			
186 $100. par, at 97 (dividend reflected) on date of death. At 87¾ less brokerage and tax on June 10, 1937 date of sale by Executor	6/10/37	4,372.91	4,850.00
Dividend paid April 20, 1937	4/20/37	200.00***	
33. 300 shares, American Gas & Electric Company $6. Cumulative Preferred, no par, at 108¾ (dividend reflected) on date of death. At 108⅜ (dividend reflected) on April 3, 1938. Not			

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
disposed of within year following death	4/ 3/38	32,512.50	32,625.00
Dividend paid May 1, 1937	5/ 1/37	450.00***	
Dividend paid August 1, 1937	8/ 1/37	450.00***	
Dividend paid November 1, 1937	11/ 1/37	450.00***	
Dividend paid February 1, 1938	2/ 1/38	450.00***	
34. 100 shares, American Locomotive Company 7% Cumulative Preferred $100. par, at 114 on date of death. At 107½ less brokerage and tax on July 13, 1937 date of sale by Executor	7/13/37	10,715.78	11,400.00
35. 600 shares, American Smelting & Refining Company, 7% Cumulative preferred $100. par, at 145¼ (dividend reflected) on date of death			87,150.00
100 shares, at 143 less brokerage and tax on August 19, 1937 date of sale by Executor	8/19/37	14,265.71	
100 shares, at 135* and 100 shares at 134½* less brokerage and tax on October 14, 1937 date of sale by Executor	10/14/37	26,881.46*	
300 shares, at 108¼ (dividend reflected) on April 3, 1938. Not disposed of within year following death	4/ 3/38	32,475.00	
Dividend paid April 30, 1937	4/30/37	1,050.00***	
Dividend paid July 31, 1937	7/ 1/37	1,050.00***	
Dividend paid October 30, 1937	10/30/37	350.00****	
Dividend paid December 21, 1937 on 300 shares	12/21/37	525.00***	
36. 25 shares, American Snuff Company, 6% Preferred $100. par, at 138 on date of death. At 132 less brokerage and tax on July 19, 1937 date of sale by Executor	7/19/37	3,291.42	3,450.00
Dividend paid July 1, 1937	7/ 1/37	37.50***	

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		Subsequent Valuation Date	Value Under Option	Value on Date of Death
190				
	37. 18 shares, American Sugar Refining Company, 7% Cumulative preferred $100. par, at 133¾ on date of death. At 127* less brokerage and tax on June 18, 1937 date of sale by Executor	6/18/37	2,279.83*	2,407.50
	Dividend paid July 18, 1937	7/18/37	31.50****	
	38. 666 shares, American Telephone & Telegraph Company, capital, $100. par, at 171¼* on date of death			114,052.50*
191	66 shares at 167⅞ less brokerage and tax on May 11, 1937 date of sale by Executor	5/11/37	11,057.08	
	200 shares, at 170 less brokerage and tax on August 17, 1937 date of sale by Executor	8/17/37	33,931.32	
	400 shares, at 115¼* on April 3, 1938. Not disposed of within year following death	4/ 3/38	46,100.00*	
	Dividend paid April 15, 1937 on 666	4/15/37	1,498.50**	1,498.50**
	Dividend paid July 15, 1937 on 600	7/15/37	1,350.00***	
	Dividend paid October 15, 1937 on 400	10/15/37	900.00***	
192	Dividend paid January 15, 1938 on 400	1/15/38	900.00***	
	Dividend paid April 15, 1938 on 400	4/15/38	900.00****	
	39. 200 shares, American Tobacco Company, 6% Cumulative Preferred $100. par, at 135 on date of death			
	100 shares, at 138 and 100 shares at 136¾ less brokerage and tax on July 14-19, 1937 dates of sale by Executor	7-14-19/37	27,406.44	27,000.00
	Dividend paid July 1, 1937	7/ 1/37	300.00***	

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death	193
40. 100 shares, American Tobacco Company, common Class "B" $25. par, at 84⅛ on date of death. At 64⅛ on April 3, 1938. Not disposed of within year following death	4/ 3/38	6,412.50	8,412.50	
Dividend paid June 1, 1937	6/ 1/37	125.00***		
Dividend paid September 1, 1937	9/ 1/37	125.00***		
Dividend paid December 1, 1937	12/ 1/37	125.00***		
Dividend paid March 1, 1938	3/ 1/38	125.00***		
41. 100 shares, Atchison, Topeka & Santa Fe Railway Company, 5% preferred $100. par, at 101½ on date of death. At 93 less brokerage and tax on September 14, 1937 date of sale by Executor	9/14/37	9,270.81	10,150.00	194
Dividend paid August 2, 1937	8/ 2/37	250.00***		
42. 35 shares, Atlanta & Charlotte Airline Company, capital $100. par, at 171½ on date of death. At 162 less brokerage and tax on June 2, 1937 date of sale by Executor	6/ 2/37	5,658.10	6,002.50	
43. 50 shares, Atlantic Refining Company, common $25. par, at 34⅜ on date of death. At 29½ less brokerage and tax on June 8, 1937 date of sale by Executor	6/ 8/37	1,464.82	1,718.75	195
Dividend paid June 15, 1937	6/15/37	12.50****		
44. 114 shares, Baltimore & Ohio Railroad Company 4% preferred $100. par, at 42 on date of death. 100 at 29 and 14 at 28⅞ less brokerage and tax on June 29, 1937 date of sale by Executor	6/29/37	3,276.82	4,788.00	

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
45. 62 shares, Bigelow Sanford Carpet Company, 6% Cumulative preferred $100. par at 109 on date of death. At 107½ less brokerage and tax on June 2, 1937 date of sale by Executor	6/ 2/37	6,645.02	6,758.00
Dividend paid June 1, 1937	6/ 1/37	93.00***	
46. 69 shares, Bigelow Sanford Carpet Company, common no par, at 54½ on date of death. At 53⅞ less brokerage and tax on			
197 June 2, 1937 date of sale by Executor	6/ 2/37	3,699.01	3,760.50
Dividend paid June 1, 1937	6/ 1/37	51.75***	
47. 20 shares, Borne Scrymser Co., capital $25. par, at 17½* on date of death. At 13⅛ less brokerage and tax on June 17, 1937 date of sale by Executor	6/17/37	259.19	350.00*
Dividend paid April 15, 1937	4/15/37	15.00**	15.00**
48. 50 shares, Brooklyn Union Gas Company, capital no par, at 38¼ on date of death. At 32⅛ less brokerage and tax on May 13, 1937 date of sale by			
198 Executor	5/13/37	1,594.21	1,912.50
49. 50 shares, Buffalo, Niagara & Eastern Power Company $5. no par, at 102⅝ (dividend reflected) on date of death. At 94 less brokerage and tax on June 21, 1937 date of sale by Executor	6/21/37	4,685.40	5,131.25
Dividend paid May 1, 1937	5/ 1/37	62.50***	
50. 85 shares, Chase National Bank of New York, capital $13.55 par, at 58⅜ on date of death. At 51¾ less tax on June 8, 1937, date of sale by Executor	6/ 8/37	4,394.75	4,961.88

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
51. 24 shares, Chesebrough Manufacturing Company, consolidated, common $25. par, at 114½ on date of death. At 116¾* less brokerage and tax on June 11, 1937 date of sale by Executor	6/11/37	2,794.68*	2,748.00
Dividend paid June 24, 1937	6/24/37	36.00****	
52. 125 shares, Chicago & Northwestern Railway Company, common $100. par, at 5 on date of death. 100 at 4¼ and 25 at 4⅛ less brokerage and tax on May 24, 1937 date of sale by Executor	5/24/37	509.98	625.00
53. 100 shares, Chrysler Corporation, common $5. par, at 121¾ on date of death			12,175.00
25 shares at 43⅜ less brokerage and tax on March 29, 1938 date of sale by Executor	3/29/38	1,079.00	
75 shares at 41 on April 3, 1938. Not disposed of within year following death	4/ 3/38	3,075.00	
Dividend paid June 11, 1937	6/11/37	200.00***	
Dividend paid September 10, 1937	9/10/37	350.00***	
Dividend paid December 18, 1937	12/13/37	300.00***	
54. 200 shares, Columbia Gas & Electric Corporation, 6% Cumulative Preferred, A, at 97¼ (dividend reflected) on date of death			19,450.00
50 shares, at 69⅞ less brokerage and tax on March 29, 1938 date of sale by Executor	3/29/38	3,479.68	
150 shares at 67 on April 3, 1938. Not disposed of within year following death	4/ 3/38	10,050.00	
Dividend paid May 15, 1937	5/15/37	300.00***	
Dividend paid August 16, 1937	8/16/37	300.00***	
Dividend paid November 15, 1937	11/15/37	300.00***	
Dividend paid February 15, 1939	2/15/38	300.00***	

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		Subsequent Valuation Date	Value Under Option	Value on Date of Death
202	55. 200 shares, Consolidated Edison Company of New York, Inc., $5. Cumulative Preferred no par, at 105* on date of death. At 90¾* on April 3, 1938. Not disposed of within year following death	4/ 3/38	18,150.00*	21,000.00*
	Dividend paid May 1, 1937	5/ 1/37	250.00**	250.00**
	Dividend paid August 2, 1937	8/ 2/37	250.00***	
	Dividend paid November 1, 1937	11/ 1/37	250.00***	
	Dividend paid February 1, 1938	2/ 1/38	250.00***	
203	Dividend paid May 2, 1938	5/ 2/38	250.00****	
	56. 2,255 shares, Consolidated Edison Company of New York, Inc., common no par at 30½ on date of death			89,072.50
	200 shares, at 34½ and 55 shares at 34⅜ less brokerage and tax on July 8, 1937 date of sale by Executor	7/ 8/37	8,729.25	
	400 shares, at 35¾ less brokerage and tax on August 24, 1937 date of sale by Executor	8/24/37	14,203.70	
	400 shares, at 19 less brokerage and tax on March 30, 1938 date of sale by Executor	3/30/38	7,515.84	
204	1,200 shares, at 19¼ on April 3, 1938. Not disposed of within year following death	4/ 3/38	23,100.00	
	Dividend paid June 15, 1937 on 2,255 shares	6/15/37	1,127.50***	
	Dividend paid September 15, 1937 on 2,000 shares	9/15/37	1,000.00***	
	Dividend paid December 15, 1937 on 1,600 shares	12/15/37	800.00***	
	Dividend paid March 15, 1938 on 1,600 shares	3/15/38	800.00***	
	57. 87 shares, Consolidated Oil Corporation, common no par, at 17½ (dividend reflected) on			

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death	
date of death. At 15½ less brokerage and tax on June 14, 1937 date of sale by Executor	6/14/37	1,331.50	1,522.50	205
Dividend paid May 15, 1937	5/15/37	17.40***		
58. 100 shares, Corn Products Refining Company, $7. Cumulative preferred $100. par, at 156½* on date of death. At 160½* less brokerage and tax on October 13, 1937 date of sale by Executor	10/13/37	16,015.67*	15,650.00*	
Dividend paid April 15, 1937	4/15/37	175.00**	175.00**	206
Dividend paid July 15, 1937	7/15/37	175.00***		
Dividend paid October 15, 1937	10/15/37	175.00****		
59. 50 shares, Corn Products Refining Company, common $25. par, at 66⅛* on date of death. At 58⅛ less brokerage and tax on June 17, 1937 date of sale by Executor	6/17/37	2,894.79	3,306.25*	
Dividend paid April 20, 1937	4/20/37	37.50**	37.50**	
60. 100 shares, Duquesne Light Company, 5% Cumulative 1st Preferred $100. par, at 113⅜* on date of death. 30 shares at 112¾* and 70 shares at 112½* less brokerage and tax on July 13, 1937 date of sale by executor	7/13/37	11,223.27*	11,337.50*	207
Dividend paid April 15, 1937	4/15/37	125.00**	125.00**	
Dividend paid July 15, 1937	7/15/37	125.00****		
61. 314 shares, E. I. duPont de Nemours & Company, 6% non voting debenture $100. par, at 134½ (dividend reflected) on date of death			42,233.00	
14 shares, at 130⅞ less brokerage and tax on June 28, 1937 date of sale by Executor	6/28/37	1,827.45		

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		Subsequent Valuation Date	Value Under Option	Value on Date of Death
208	200 shares, at 131 and 100 shares at 132 less brokerage and tax on November 16, 1937 date of sale by Executor	11/16/37	39,297.20	
	Dividend paid April 24, 1937 on 314 shares	4/24/37	471.00***	
	Dividend paid July 26, 1937 on 300 shares	7/26/37	450.00***	
	Dividend paid October 25, 1937 on 300 shares	10/25/37	450.00***	
209	62. 50 shares, Eastman Kodak Company, common no par, at 163 on date of death. At 168⅜* less brokerage and tax on June 9, 1937 date of sale by Executor	6/ 9/37	8,401.58*	8,150.00
	Dividend paid July 1, 1937	7/ 1/37	100.00****	
	63. 300 shares, Electric Bond and Share Company, $6. Cumulative preferred no par, at 80⅝ (dividend reflected) on date of death			24,187.50
	75 shares at 45¾ less brokerage and tax on March 29, 1938 date of sale by Executor	3/29/38	3,413.18	
210	225 shares, at 47 (dividend reflected) on April 3, 1938. Not disposed of within year following death	4/ 3/38	10,575.00	
	Dividend paid May 1, 1937	5/ 1/37	450.00***	
	Dividend paid August 2, 1937	8/ 2/37	450.00***	
	Dividend paid November 1, 1937	11/ 1/37	450.00***	
	Dividend paid February 1, 1938	2/ 1/38	450.00***	
	64. 50 shares, First National Stores, Inc., common no par, at 47 on date of death. At 41 less brokerage and tax on June 8, 1937 date of sale by Executor	6/ 8/37	2,037.95	2,350.00

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
5. 100 shares, General Cigar Company, Inc., common no par, at 45½ on date of death. At 39¼ less brokerage and tax on July 13, 1937 date of sale by Executor	7/13/37	3,900.92	4,550.00
Dividend paid May 1, 1937	5/ 1/37	100.00***	
6. 200 shares, General Electric Company, common no par, at 56½* on date of death. At 31¼* on April 3, 1938. Not disposed of within year following death	4/ 3/38	6,250.00*	11,300.00*
Dividend paid April 26, 1937	4/26/37	80.00**	80.00**
Dividend paid July 26, 1937	7/26/37	80.00***	
Dividend paid October 25, 1937	10/25/37	80.00***	
Dividend paid December 20, 1937	12/20/37	200.00***	
Dividend paid April 25, 1938	4/25/38	60.00****	
7. 50 shares, General Foods Corporation, common no par, at 42⅛ on date of death. At 39 less brokerage and tax on June 8, 1937 date of sale by Executor	6/ 8/37	1,937.96	2,106.25
Dividend paid May 15, 1937	5/15/37	25.00***	
8. 300 shares, General Motors Corporation, common $10. par, at 61⅛ on date of death. At 51⅛ less brokerage and tax on September 21, 1937 date of sale by Executor	9/21/37	15,271.19	18,337.50
Dividend paid June 12, 1937	6/12/37	300.00***	
Dividend paid September 13, 1937	9/13/37	300.00***	
9. 30 shares, Great Northern Iron Ore Properties, Trustees Certificate of Beneficial Interest, no par, at 26 on date of death. At 21⅛ less brokerage and tax on May 18, 1937 date of sale by Executor	5/18/37	627.30	780.00

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
70. 54 shares, Great Northern Railway Company, $6. non cumulative preferred no par, at 50¼ on date of death. At 53⅞ less brokerage and tax on June 14, 1937 date of sale by Executor	6/14/37	2,894.88	2,713.50
71. 50 shares, Indianapolis Power & Light Company, 6½% preferred $100. par, at 98 on date of death. At 92* less brokerage and tax on June 23, 1937 date of sale by Executor	6/23/37	4,585.40*	4,900.00
215 Dividend paid July 1, 1937	7/ 1/37	81.25****	
72. 108 15/100 shares, International Business Machine Company, capital no par, at 162⅝* on date of death. At 132¼* on April 3, 1938. Not disposed of within year following death	4/ 3/38	14,302.84*	17,587.89*
Dividend paid April 10, 1937	4/10/37	162.00**	162.00**
Dividend paid July 10, 1937	7/10/37	162.00***	
Dividend paid October 9, 1937	10/ 9/37	162.00***	
Dividend paid December 23, 1937	12/23/37	162.00***	
5 40/100 shares received April 1, 1938 as stock dividend, at 132¼ on April 3, 1938	4/ 3/38	714.15A	
216 Dividend paid April 11, 1938	4/11/38	169.50****	
73. 200 shares, International Nickel Company of Canada, Ltd. common no par, at 67¾ on date of death. At 42½ on April 3, 1938. Not disposed of within year following death	4/ 3/38	8,500.00	13,550.00
Dividend paid June 30, 1937 less tax	6/30/37	95.00***	
Dividend paid September 30, 1937 less tax	9/30/37	95.00***	
Dividend paid December 31, 1937 less tax	12/31/37	142.50***	
Dividend paid March 31, 1938 less tax	3/31/38	95.00***	

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
800 shares, Lanston Monotype Machine Company, capital, $100. par, at 100 on date of death			80,000.00
25 shares at 89 less brokerage and tax on July 28, 1937 date of sale by Executor	7/28/37	2,217.75	
400 shares, at 79 and 75 shares at 80 less brokerage and tax on September 14-15, 1937 dates of sale by Executor	9/14-15/37	37,462.25	
300 shares, at 68½ on April 3, 1938. Not disposed of within year following death	4/ 3/38	20,550.00	
Dividend paid June 1, 1937 on 800 shares	6/ 1/37	800.00***	
Dividend paid August 31, 1937 on 775 shares	8/31/37	775.00***	
Dividend paid November 30, 1937 on 300 shares	11/30/37	300.00***	
Dividend paid February 25, 1938	2/25/38	300.00***	
300 shares, Liggett & Myers Tobacco Company 7% Cumulative Preferred $100. par, at 157¼ on date of death, 200 shares, at 156½ and 100 shares, at 157 less brokerage and tax on July 13, 1937 date of sale by Executor	7/13/37	46,897.05	47,175.00
Dividend paid July 1, 1937	7/ 1/37	525.00***	
100 shares, Liggett & Myers Tobacco Company, common B, $25. par, at 101¾ on date of death. At 83¾ on April 3, 1938. Not disposed of within year following death	4/ 3/38	8,375.00	10,175.00
Dividend paid June 1, 1937	6/ 1/37	100.00***	
Dividend paid September 1, 1937	9/ 1/37	100.00***	
Dividend paid December 1, 1937	12/ 1/37	100.00***	
Dividend paid December 22, 1937	12/22/37	200.00***	
Dividend paid March 1, 1938	3/ 1/38	100.00***	

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
77. 500 shares, Manhattan Railway Co. Modified Guaranteed Consolidated $100. par, at 11⅜ on date of death. 200 shares, at 9⅜, 200 shares at 9¼ and 100 shares at 8⅞ less brokerage and tax on May 18-19, 1937 dates of sale by Executor	5/18-19/37	4,539.90	5,687.50
78. 150 shares, Mississippi River Power Company 6% Cumulative Preferred $100. par, at 114⅜ on date of death. At 109 less brokerage and tax on August 3, 1937 date of sale by Executor	8/ 3/37	16,298.89	17,156.25
221 Dividend paid July 1, 1937	7/ 1/37	225.00***	
79. 100 shares, Monsanto Chemical Company, common $10. par, at 90 on date of death. At 96¼ less brokerage and tax on July 13, 1937 date of sale by Executor	7/13/37	9,600.30	9,000.00
Dividend paid June 15, 1937	6/15/37	50.00***	
80. 250 shares, Morris & Essex Railroad Company, capital $50. par, at 63¾ on date of death. 210 shares at 60 and 40 shares, at 59¼ less tax on May 18, 1937 date of sale by Executor	5/18/37	14,953.75	15,937.50
222			
81. 100 shares, National Biscuit Company, 7% Cumulative Preferred $100. par, at 149½ on date of death. At 149½ less brokerage and tax on July 21, 1937 date of sale by Executor	7/21/37	14,915.70	14,950.00
Dividend paid May 29, 1937	5/29/37	175.00***	

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
2. 100 shares, National Biscuit Company, common $10. par, at 29¼* on date of death. At 23¼* less brokerage and tax on June 29, 1937 date of sale by Executor	6/29/37	2,307.95*	2,925.00*
Dividend paid April 15, 1937	4/15/37	40.00**	40.00**
Dividend paid July 15, 1937	7/15/37	40.00****	
3. 50 shares, New York Air Brake Company, Inc. common no par, at 86½ on date of death. At 81⅞* less brokerage and tax on May 24, 1937 date of sale by Executor	5/24/37	4,079.16*	4,325.00
Dividend paid June 1, 1937	6/ 1/37	25.00****	
4. 90 shares, New York Central Railroad Company, capital no par, at 50⅛ on date of death. At 39⅝ less brokerage and tax on June 17, 1937 date of sale by Executor	6/17/37	3,544.57	4,511.25
Proceeds of sale of 90 rights	4/27/37	36.56B	
5. 190 shares, New York, Chicago & St. Louis Railroad Company, 6% Cumulative preferred Series A, $100. par, at 91¼ on date of death. 100 shares at 80 and 90 shares at 79⅞ less brokerage and tax on July 1, 1937 date of sale by Executor	7/ 1/37	15,133.34	17,337.50
6. 200 shares, New York Telephone Company, 6½% Cumulative preferred $100. par, at 110* on date of death. At 111.55 less tax on May 13, 1937 date of sale by Executor	5/13/37	22,292.00	22,000.00*
Dividend paid April 15, 1937	4/15/37	325.00**	325.00**

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
87. 100 shares, North American Edison Company, $6. Cumulative preferred no par, at 100 (dividend reflected) on date of death. At 97 less brokerage and tax on October 13, 1937 date of sale by Executor	10/13/37	9,670.80	10,000.00
Dividend paid June 1, 1937	6/ 1/37	150.00***	
Dividend paid September 1, 1937	9/ 1/37	150.00***	
88. 100 shares, North Birmingham Land Company, Capital $1. par, at 1 on date of death. At 1 less tax and exchange on August 23, 1937 date of sale by Executor	8/23/37	99.71	100.00
89. 48 shares, Northern Pacific Railway Company, capital $100. par, at 32 on date of death. At 33⅝ less brokerage and tax on June 8, 1937 date of sale by Executor	6/ 8/37	1,602.44	1,536.00
90. 180 shares, Ohio Oil Company, Inc., common no par, at 22¼ on date of death. 100 shares at 18⅛ and 80 shares at 18 less brokerage and tax on June 29, 1937 date of sale by Executor	6/29/37	3,217.33	4,005.00
Dividend paid June 15, 1937	6/15/37	90.00***	
91. 100 shares, Parke Davis & Co., capital no par, at 38⅝ on date of death. At 38 less brokerage and tax on May 28, 1937 date of sale by Executor	5/28/37	3,775.92	3,862.50
92. 200 shares, Pennsylvania Railroad Company, capital $50. par, at 46⅞ on date of death			9,375.00

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Exhibit A, Annexed to Stipulation of Facts.

		Subsequent Valuation Date	Value Under Option	Value on Date of Death	
	50 shares, at 15⅞ less brokerage and tax on March 29, 1938 date of sale by Executor	3/29/38	784.23		229
	150 shares, at 15⅞ on April 3, 1938. Not disposed of within year following death	4/ 3/38	2,381.25		
	Dividend paid July 22, 1937	7/22/37	100.00***		
	Dividend paid December 20, 1937	12/20/37	150.00***		
93.	50 shares, Pere Marquette Railway Company, 5% Cumulative prior preferred $100. par, at 81⅜ on date of death. At 78 less brokerage and tax on June 9, 1937 date of sale by Executor	6/ 9/37	3,885.42	4,068.75	230
94.	250 shares, Public Service Corporation of New Jersey, $5. Cumulative preferred no par, at 103⅛ on date of death. 100 shares at 98, 100 shares at 97 and 50 shares at 97⅞ less brokerage and tax on October 13-14, 1937 dates of sale by Executor	10/13-14/37	24,320.75	25,781.25	
	Dividend paid June 30, 1937	6/30/37	312.50***		
	Dividend paid September 30, 1937	9/30/37	312.50***		
95.	125 shares, Pullman, Inc., capital no par, at 61¼ (dividend reflected) on date of death. 100 shares at 52¼ and 25 shares at 52⅛ less brokerage and tax on July 1, 1937 date of sale by Executor	7/ 1/37	6,494.86	7,656.25	231
	Dividend paid May 15, 1937	5/15/37	46.88***		
96.	50 shares, Shell Union Oil Corporation, 5½% Cumulative Convertible preferred $100. par, at 103⅜ on date of death.				

Exhibit A, Annexed to Stipulation of Facts.

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
At 104⅛ less brokerage and tax on June 14, 1937 date of sale by Executor	6/14/37	5,189.14	5,168.75
97. 900 shares, Socony Vacuum Oil Company, Inc., capital $15. par, at 19¼ on date of death. At 12⅛ on April 3, 1938. Not disposed of within year following death	4/ 3/38	10,912.50	17,325.00
Dividend paid September 15, 1937	9/15/37	225.00***	
Dividend paid December 15, 1937	12/15/37	270.00***	
233 Dividend paid March 15, 1938	3/15/38	225.00***	
98. 18 shares, South Penn Oil Company, Capital $25. par, at 44 on date of death. At 42¾ less brokerage and tax on May 25, 1937 date of sale by Executor	5/27/37	765.81	792.00
99. 50 shares, Southern Pacific Company, capital $100. par, at 60¼ on date of death. At 52⅛ less brokerage and tax on June 8, 1937 date of sale by Executor	6/ 8/37	2,592.94	3,012.50
100. 100 shares, Southern Railway Company, 5% Non-Cumulative Preferred $100. par, at 53⅝ on date of death. At 45 less brokerage and tax on July 13, 1937 date of sale by Executor	7/13/37	4,475.91	5,362.50
234 101. 100 shares, Southern Railway Company, common $100. par at 40 on date of death. At 32½ less brokerage and tax on July 13, 1937 date of sale by Executor	7/13/37	3,225.93	4,000.00

Exhibit A, Annexed to Stipulation of Facts.

	Subsequent Valuation Date	Value Under Option	Value on Date of Death	
				235
2. 50 shares, Standard Brands Inc., common no par, at 14⅞ on date of death. At 12⅞ less brokerage and tax on May 14, 1937 date of sale by Executor	5/14/37	633.98	743.75	
3. 400 shares, Standard Oil Company of California, capital no par, at 46¾ on date of death. At 27⅛ on April 3, 1938. Not disposed of within year following death	4/ 3/38	10,850.00	18,700.00	
Dividend paid June 15, 1937	6/15/37	180.00***		236
Dividend paid September 15, 1937	9/15/37	180.00***		
Dividend paid December 15, 1937	12/15/37	320.00***		
Dividend paid March 15, 1938	3/15/38	140.00***		
4. 400 shares, Standard Oil Company of Indiana, capital $25. par, at 47 on date of death			18,800.00	
100 shares at 26⅞ less brokerage and tax on March 29, 1938 date of sale by Executor	3/29/38	2,667.19		
300 shares at 26⅝ on April 3, 1938. Not disposed of within year following death	4/ 3/38	7,987.50		
Dividend paid June 15, 1937	6/15/37	160.00***		
Dividend paid September 15, 1937	9/15/37	200.00***		
Dividend paid December 15, 1937	12/15/37	400.00***		237
Dividend paid March 15, 1938	3/15/38	100.00***		
5. 16 shares, Standard Oil Company of Kansas, capital $10. par, at 31 on date of death. At 30⅝ less brokerage and tax on May 18, 1937 date of sale by Executor	5/18/37	486.85	496.00	
6. 247 shares, Standard Oil Company of Kentucky, capital $10. par at 20 on date of death.				

Exhibit A, Annexed to Stipulation of Facts.

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		Subsequent Valuation Date	Value Under Option	Value on Date of Death
	200 shares at 19⅛ and 47 shares at 18⅞ less brokerage and tax on July 2, 1937 date of sale by Executor	7/ 2/37	4,672.74	4,940.00
	Dividend paid June 15, 1937	6/15/37	98.80***	
107.	18 shares, Standard Oil Company of Nebraska, capital $25. par, at 13⅝ on date of death. At 11¼ less brokerage and tax on June 9, 1937 date of sale by Executor	6/ 9/37	199.50	245.25

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108.	1,000 shares, Standard Oil Company of New Jersey, capital $25. par, at 71¼ on date of death			71,250.00
	400 shares at 65½ less brokerage and tax on June 29, 1937 date of sale by Executor	6/29/37	26,108.47	
	600 shares at 43½ on April 3, 1938. Not disposed of within year following death	4/ 3/38	26,100.00	
	Dividend paid June 15, 1937 on 1,000 shares	6/15/37	1,250.00***	
	Dividend paid December 15, 1937 on 600 shares	12/15/37	750.00***	

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109.	19 shares, Standard Oil Company of Ohio, capital $25. par at 43 on date of death. At 35¾ on May 24, 1937 date of sale by Executor	/24/37	675.37	817.00
110.	200 shares, Texas Gulf Sulphur Company, capital no par, at 41½ on date of death. At 34¾ less brokerage and tax on July 2, 1937 date of sale by Executor	7/ 2/37	6,901.86	8,300.00
	Dividend paid June 15, 1937	6/15/37	150.00***	

Exhibit A, Annexed to Stipulation of Facts.

	Subsequent Valuation Date	Value Under Option	Value on Date of Death
0 shares, Union Carbide & Carbon Corporation, capital no par, at 102 on date of death. At 63½ on April 3, 1938. Not disposed of within year following death	4/ 3/38	19,050.00	30,600.00
vidend paid July 1, 1937	7/ 1/37	240.00***	
vidend paid October 1, 1937	10/ 1/37	240.00***	
vidend paid January 3, 1938	1/ 3/38	240.00***	
vidend paid April 1, 1938	4/ 1/38	240.00***	
shares, Union Pacific Railroad Company, 4% non-cumulative preferred $100. par, at 94 on date of death. At 92⅝ less brokerage and tax on June 8, 1937 date of sale by Executor	6/ 8/37	8,125.31	8,272.00
0 shares, Union Pacific Railroad Company, common $100. par, at 144½ on date of death			21,675.00
shares at 61¾* less brokerage nd tax on March 29, 1938 date f sale by Executor	3/29/38	2,335.81*	
2 shares at 60 on April 3, 1938. Not disposed of within year following death	4/ 3/38	6,720.00	
vidend paid July 1, 1937	7/ 1/37	225.00***	
vidend paid October 1, 1937	10/ 1/37	225.00***	
vidend paid January 3, 1938	1/ 3/38	225.00***	
vidend paid April 1, 1938 on 112 shs.	4/ 1/38	168.00***	
vidend paid April 1, 1938 on 38 shs.	4/ 1/38	57.00****	
shares, Union Tank Car Company, capital no par, at 29 on date of death. At 28⅝ less brokerage and tax on May 14, 1937 date of sale by Executor	5/14/37	567.68	580.00

Exhibit A, Annexed to Stipulation of Facts.

		Subsequent Valuation Date	Value Under Option	Value on Date of Death
244				
115.	100 shares, United Fruit Company, capital no par, at 85¼* on date of death. At 64 less brokerage and tax on September 14, 1937 date of sale by Executor	9/14/37	6,373.37	8,525.00*
	Dividend paid April 15, 1937	4/15/37	75.00**	75.00**
	Dividend paid July 15, 1937	7/15/37	75.00***	
116.	200 shares, United Gas Improvement Company $5. Cumulative Preferred no par, at 111¼ on			
245	date of death. At 105 less brokerage and tax on October 13, 1937, date of sale by Executor	10/13/37	20,931.58	22,250.00
	Dividend paid June 30, 1937	6/30/37	250.00***	
	Dividend paid September 30, 1937	9/30/37	250.00***	
117.	100 shares, United States Rubber Company 8% Cumulative 1st preferred $100. par, at 104⅝ on date of death. At 87 less brokerage and tax on May 18, 1937 date of sale by Executor	5/18/37	8,670.80	10,462.50
118.	700 shares, United States Steel Corporation, 7% Cumulative			
246	Preferred $100. par, at 144½ on date of death			101,150.00
	100 shares, at 130* less brokerage and tax on July 12, 1937 date of sale by Executor	7/12/37	12,965.74*	
	100 shares at 130¼* less brokerage and tax on August 24, 1937 date of sale by Executor	8/24/37	12,990.73*	
	200 shares, at 109½* less brokerage and tax on November 19, 1937 date of sale by Executor	11/19/37	21,831.56*	
	300 shares, at 98⅞ on April 3, 1938. Not disposed of within year following death	4/ 3/38	29,662.50	

Exhibit A, Annexed to Stipulation of Facts.

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	Subsequent Valuation Date	Value Under Option	Value on Date of Death
Dividend paid May 29, 1937 on 700 shares	5/29/37	4,025.00***	
Dividend paid June 29, 1937 on 700 shares	6/29/37	1,400.00***	
Dividend paid July 30, 1937 on 700 shares	7/30/37	200.00**** 1,200.00***	
Dividend paid August 30, 1937 on 600 shares	8/30/37	300.00**** 1,500.00***	
Dividend paid November 20, 1937 on 500 shares	11/20/37	350.00**** 525.00***	
Dividend paid February 19, 1938 on 500 shares	2/19/38	525.00***	
119. 50 shares, West Penn Power Company, 7% Cumulative Preferred $100. par, at 120* on date of death. 30 shares at 120½ and 20 shares at 120 less brokerage and tax on June 8, 1937 date of sale by Executor	6/ 8/37	5,997.87	6,000.00*
Dividend paid May 1, 1937	5/ 1/37	87.50**	87.50**
120. 100 shares, Westinghouse Electric & Manufacturing Company, common $50. par, at 140½ on date of death. At 147½ less brokerage and tax on July 13, 1937 date of sale by Executor	7/13/37	14,718.20	14,050.00
Dividend paid June 1, 1937	6/ 1/37	100.00***	

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WORTHLESS SECURITIES

121. $3,000. Chicago, Rock Island and Pacific Railroad Company, 4%, due November 1, 2002 (stamped)	4/ 3/38	—0—	—0—
122. $10,000. United States Reduction and Refining Company, 6% Sinking Fund 1st Mortgage, due July 1, 1931 (Stamped)	"	—0—	—0—
10 shares, American Cigarette Machine Company, capital $100. par	"	—0—	—0—

Exhibit A, Annexed to Stipulation of Facts.

		Subsequent Valuation Date	Value Under Option	Value on Date of Death
250				
	123. 500 shares, Electrical Lead Reduction Company, capital, $50. par	"	—0—	—0—
	124. 18 shares, Land & River Company, common $100. par	"	—0—	—0—
	125. 1 share, Land & River Company, 6% 1st Preferred $100. par	"	—0—	—0—
	126. 10 shares, Ohio & Indiana Consolidated Natural and Illuminating Gas Company, Capital $100. par	"	—0—	—0—
251	127. 50 shares, Spring Valley Gold Company, Capital $5. par	"	—0—	—0—
	128. 50 shares, West Side Construction Company, Capital $100. par	"	—0—	—0—
	129. 200 shares, White Knob Copper Company, Ltd., Capital $10 par	"	—0—	—0—
	130. 2 shares, Societe Metallurgie-Electro Thermique, par 25 frs.	"	—0—	—0—
	131. 6 shares, Societe Civile de Hauts Fourneaux Electriques au Chile	"	—0—	—0—
	132. Less items of dividends and interest here in controversy (dividends declared and interest earned between date of death and subsequent valuation date under option)			
252			54,578.60C	

Exhibit A, Annexed to Stipulation of Facts.

The following note appears at the end of Schedule B of the estate tax 253
eturn. The respondent does not concede the correctness of the statements
ontained therein:

> The items represented by the latter figure, to wit, $54,578.60 are returned in this schedule for information purposes only and in the form required by Regulations 80, 1937 Edition. They are not included in the gross estate for the reason that the Revenue Act of 1926, as amended, and specifically 302 J thereof added by Section 202 of the Revenue Act of 1935 does not require the inclusion of said items and the provisions of Regulations 80, 1937 Edition, which purport to require their inclusion, are contrary to the express provisions of the said Revenue Act, as amended.

* These quotations are "ex dividend".
** Dividend declared before date of death and payable to stockholders of record 254
before date of death.
*** Dividend payable and paid after date of death and before optional valuation date to stockholders of record after date of death.
*** Dividend payable after optional valuation date to stockholders of record after date of death and before optional valuation date.
x Interest accrued but not due at date of death.
xx Interest accrued after date of death to optional valuation date. Not due at latter date but collected from purchaser on sale or from obligor on redemption.
xxx Interest accrued and paid after date of death and before optional valuation date.
xxx Interest accrued and paid after date of death to optional valuation date but not due at latter date.

A. This stock dividend of the value of $714.15 was included by the petitioner in he items amounting to $54,578.60 originally in dispute. The petitioner now concedes hat such stock dividend is includible in the gross estate for estate tax purposes, eaving $53,864.45 in dispute. Such concession is made by the petitioner because such tock dividend is a true stock dividend and not an income item and in order to avoid ny controversy as to the proper treatment of such item for estate tax purposes.

B. The proceeds of the sale of stock rights amounting to $36.56 were included by he petitioner in the gross estate on the estate tax return and is not in dispute here. 255

C. This amount includes the stock dividend referred to in Footnote A, which is no nger in issue.

The term "dividend reflected" means that a dividend had been declared prior to the late shown but was payable to stockholders of record on a subsequent date.

Opinion.

256

UNITED STATES BOARD OF TAX APPEALS.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF CORDELIA Y. ABENDROTH, DECEASED, PETITIONER, *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF KATE READ BLACQUE, DECEASED, PETITIONER, *v.*
257 COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

Docket Nos. 94755, 97857. Promulgated May 17, 1940.

Where executor elects optional valuation date (sec. 202 (a), Revenue Act of 1935), income of estate prior to such valuation date must be included in gross estate.

James D. Ouchterloney, Esq., George H. Craven, Esq., and *Earle J. Starkey, Esq.,* for the petitioners.

E. O. Hanson, Esq., and *Benjamin M. Brodsky, Esq.,* for the respondent.

258 OPPER: These proceedings were brought for a redetermination of deficiencies in estate tax. In Docket No. 94755 the amount of the deficiency assailed is $432.83; in Docket No. 97857 the amount is $13,996.28. The dates of death were October 9, 1936, and April 3, 1937, respectively.

The sole question presented by both cases is whether, upon an election by an executor to exercise the option given in section 302 (j) of the Revenue Act of 1926, as added by section 202 (a) of the Revenue Act of 1935, to value the estate as of a date subsequent to decedent's

death, there must be included in the gross estate the income thereon between the date of death and the optional valuation date. 259

All the facts in both proceedings have been stipulated. They are hereby found accordingly.

The stipulations show that in each case the executors elected upon the return to have the gross estate valued at the optional valuation dates provided by the section referred to. As permitted by that provision, retained assets were valued as of one year after decedent's death, and those disposed of in the interim were valued as of the date of disposition.

Respondent included in the respective gross estates items of income consisting of interest and dividends, collected or accruing between the date of death and the optional valuation date. The deficiency resulting from that adjustment is the subject of this controversy. 260

The question presented here was considered by the Court of Appeals, Second Circuit, in *Saks* v. *Higgins*, —— Fed. (2d) ——, (Apr. 8, 1940) and was there answered in the affirmative. On the authority of that decision, respondent's inclusion in the gross estate of the interim estate income is sustained.

Reviewed by the Board.

Decision will be entered for the respondent. 261

BLACK, dissenting: Undoubtedly the Commissioner in determining the deficiencies in each of these proceedings was following article 11 of Treasury Regulations 80 (1937 Edition). If the provisions of these regulations which require interest earned after decedent's death and ordinary dividends declared and paid after decedent's death to be included in the value of decedent's state are

262 valid, then, of course, the majority opinion is correct. However, it seems to us that the regulations clearly go beyond the statute. A regulation which goes beyond the statute is invalid and should not be enforced. *Manhattan General Equipment Co.* v. *Commissioner,* 297 U. S. 129, and cases there cited.

Under the terms of section 302 of the Revenue Act of 1926, the value of the property which is to be included in decedent's gross estate is the value of such property at the time of decedent's death. Subdivision (j), which was added by the Revenue Act of 1935, did not change in the slightest degree the property which was to be included
263 in decedent's estate. It simply postponed the date at which such property was to be valued, if the executor of the estate elected to avail himself of such privilege. Of course, if any particular piece of property increases in value between the date of decedent's death and the date of the postponed valuation, the increase in value must be taken into account, but nevertheless, it is the same property. Interest earned after decedent's death and ordinary dividends declared and paid after decedent's death, are not items of property on hand at decedent's death. They are not items which represent mere increase in value. They are items of property which have been acquired by the estate since decedent's death and are
264 taxable income to the estate. We see nothing in the language of section 302 (j) which would indicate that Congress intended that such items of newly acquired property should be added to decedent's gross estate merely because the valuation date is postponed for one year. A perusal of the statement of the managers on the part of the House which accompanied the Conference Report on the Revenue Bill of 1935 (74th Cong., 1st sess., H. R. 8974, Conference Report No. 1885, pp. 10-11), seems to indicate to the contrary.

We recognize, of course, that the views which we have

herein expressed are contrary to *Saks* v. *Higgins*, —— 265
Fed. (2d) —— (Apr. 8, 1940), cited in the majority opinion. While we have great respect for the views of the learned court which handed down that decision, we are compelled, for reasons we have already stated, to differ from the majority opinion of that court, and to file our dissent in this proceeding.

VAN FOSSAN, ARNOLD, and HARRON agree with this dissent.

Decision.

UNITED STATES BOARD OF TAX APPEALS, 266

WASHINGTON.

Docket No. 94755.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Cordelia Y. Abendroth, Deceased,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent. 267

Pursuant to the determination of the Board, as set forth in its Opinion, promulgated May 17, 1940, it is

ORDERED AND DECIDED: That there is a deficiency of $432.83 in estate tax.

Enter:

(Signed) C. R. ARUNDELL,
Member.

268 **Decision.**

UNITED STATES BOARD OF TAX APPEALS,

WASHINGTON.

Docket No. 97857.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, Deceased,

Petitioner,

v.

269 COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Pursuant to the determination of the Board, as set forth in its Opinion, promulgated May 17, 1940, it is

ORDERED AND DECIDED: That there is a deficiency of $13,996.28 in estate tax.

Enter:

270 (Signed) C. R. ARUNDELL,
Member.

Petition for Review.

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IN THE
UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

Board of Tax Appeals, Docket No. 94755.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Cordelia Y. Abendroth, Deceased,
Petitioner,

—against—

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COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

The petition of City Bank Farmers Trust Company, as executor of the last will and testament of Cordelia Y. Abendroth, deceased, respectfully shows:

I.

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City Bank Farmers Trust Company is a corporation duly organized under the banking laws of the State of New York and is engaged in said state in the business of a trust company, with its principal office and place of business at No. 22 William Street, New York, N. Y. The said Cordelia Y. Abendroth died on October 9, 1936, a citizen of the United States residing at Harrison, Westchester County, New York, leaving a last will and testament which was duly admitted to probate by the Surrogate's Court of Westchester County, New York, on Octo-

274 ber 16, 1936. On the last mentioned date letters testamentary were duly issued by said Court to said City Bank Farmers Trust Company, the executor named in said will, which since said date has been and is now the duly appointed, qualified and acting executor of said last will and testament and which, as such executor, is the petitioner herein.

The respondent is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, appointed and holding office by virtue of the laws of the United States.

The Federal estate tax return of the estate of said
275 decedent was duly filed by the petitioner on November 24, 1937, with the United States Collector of Internal Revenue for the Fourteenth District of New York, Albany, N. Y. The court in which the review of this proceeding is sought is the Circuit Court of Appeals for the Second Circuit, the circuit in which is located the office of said Collector.

II.

The nature of the controversy is as follows:

The petitioner elected on said Federal estate tax return to have the value of the gross estate of said decedent de-
276 termined by valuing all the property included therein on the date of the decedent's death as of the date one year after death, or on the other applicable valuation dates in the case of property distributed, sold, exchanged or otherwise disposed of between the date of death and the date one year after death, pursuant to the provisions of Section 302 (j) of the Revenue Act of 1926, as added by Section 202 (a) of the Revenue Act of 1935. During the period of one year after the death of said decedent the petitioner received in cash (1) interest of $1,417.70 which accrued after the date of death on bonds owned by the

decedent at the time of her death and retained by the 277
petitioner until the expiration of said one-year period; (2) interest of $60.77 which accrued after the date of death on bonds owned by the decedent on the date of death but sold or redeemed within the one-year period, and which interest was received from the purchaser on sale or the obligor on redemption; and (3) dividends of $1,829.40 on stocks owned by the decedent at the date of death which were payable to stockholders of record as of a date subsequent to that date. In addition thereto, on the date one year after the decedent's death, interest of $314.79 had accrued but was not due on bonds owned by the decedent on the date of death, and dividends of 278
$161.25 had been declared on stocks owned by the decedent on the date of death but were payable subsequent to one year after the date of death to stockholders of record as of a date within the period of one year after the date of death. Those five items of interest and dividends, amounting to $3,783.91, were disclosed by the petitioner on said return for purposes of information but were not included in the gross estate for estate tax purposes.

The respondent on April 3, 1939, issued a notice of deficiency setting forth his final determination of the estate tax liability of said estate and therein determined that, in addition to the assets owned by the decedent on the date of her death, there should be included in said gross estate 279
the said items of income accruing or arising after the date of death, amounting to $3,783.91, and on the basis of such determination determined that there was a deficiency of $432.83 in the estate tax on said estate.

The petitioner on July 16, 1938, filed a petition with the United States Board of Tax Appeals appealing from such determination. On motion duly made by the petitioner and granted by the Board, the proceeding so instituted was consolidated with a proceeding instituted by City Bank Farmers Trust Company, as executor of the last will and

280 testament of Kate Read Blacque, deceased, Board of Tax Appeals Docket No. 97857, and on September 29, 1939, said consolidated proceedings were submitted to the Board on the pleadings and a stipulation of facts. On May 17, 1940, the Board rendered its opinion in said proceedings in which it sustained the respondent's said determination, and on May 18, 1940, the Board entered its decision determining that there is a deficiency of $432.83 in the estate tax on said estate.

III.

281 The petitioner, as a basis for such review, makes the following assignment of errors committed by the United States Board of Tax Appeals:

1. The Board erred in holding that where the executor of a decedent's estate elects upon the estate tax return, pursuant to the provisions of Section 302 (j) of the Revenue Act of 1926, as added by Section 202 (a) of the Revenue Act of 1935, to have the gross estate valued as of the date one year after death or other optional valuation dates specified in said section, there must be included as part of the gross estate income consisting of interest and dividends accruing or arising after the date of death, and
282 in failing and refusing to hold that such items of income should be excluded from the gross estate.

2. The Board erred in holding that said items of interest and dividends amounting to $3,783.91, which accrued or arose wholly after the decedent's death, or any part thereof, was part of the property included in the decedent's gross estate on the date of her death and in failing and refusing to hold that such interest and dividends were not part of such property on the date of death.

3. The Board erred in holding that said items of interest and dividends amounting to $3,783.91, or any part thereof, was part of the decedent's gross estate for estate tax purposes, and in failing and refusing to hold that said items should be excluded from such gross estate. 283

4. The Board erred in determining that there is a deficiency of $432.83, or any other amount, in the estate tax on said estate, and in failing and refusing to hold that there is no deficiency in such tax.

WHEREFORE, the petitioner prays that the decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Second Circuit; that a transcript of the record be prepared in accordance with the law and rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court. 284

ROLLIN BROWNE,
JAMES D. OUCHTERLONEY,
GEORGE CRAVEN,
Attorneys for Petitioner,
20 Exchange Place,
New York, N. Y. 285

MITCHELL, TAYLOR, CAPRON & MARSH,
20 Exchange Place,
New York, N. Y.,
Of Counsel.

State of New York,
County of New York—ss.:

GEORGE CRAVEN, being duly sworn, deposes and says that he is one of the attorneys and counsel of record for the petitioner in the above-entitled case; that as such attorney and counsel he is duly authorized to verify the petition for review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the United States Board of Tax Appeals in the proceeding described in the foregoing petition; that he has read the said petition and knows the contents thereof, and that the facts set forth therein are true to the best of his knowledge, information and belief.

GEORGE CRAVEN.

Subscribed and sworn to before me
this 2nd day of July, 1940.

BERTHA BUSSELL,
Notary Public,
Bronx County.
Bronx Co. Clk's No. 135, Reg. No. 108B42.
N. Y. Co. Clk's No. 450, Reg. No. 2B327.
Kings Co. Clk's No. 222, Reg. No. 2233.
Commission expires March 30, 1942.
(Notary Seal)

Notice of Filing of Petition for Review. 289

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

Board of Tax Appeals, Docket No. 94755.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and 290
Testament of Cordelia Y. Abendroth, Deceased,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

To the Commissioner of Internal Revenue:

291

You are hereby notified that the petitioner City Bank Farmer's Trust Company, as executor of the last will and testament of Cordelia Y. Abendroth, deceased, did on the 5th day of July, 1940, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the Board of Tax Appeals heretofore entered in the above-entitled case. A copy of the petition for review, together

292 with the assignment of errors, as filed, is attached hereto and served upon you herewith.

Dated this 6th day of July, 1940.

ROLLIN BROWNE,
JAMES D. OUCHTERLONEY,
GEORGE CRAVEN,
Attorneys for Petitioner,
20 Exchange Place,
New York, N. Y.

MITCHELL, TAYLOR, CAPRON & MARSH,
20 Exchange Place,
293 New York, N. Y.,
Of Counsel.

Personal service of the foregoing notice, together with a copy of the petition for review and assignment of errors mentioned therein, is hereby acknowledged this 6th day of July, 1940.

J. P. WENCHELL,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

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Petition for Review.

295

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

Board of Tax Appeals, Docket No. 97857.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, Deceased,

Petitioner,

—against—

296

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

The petition of City Bank Farmers Trust Company, as executor of the last will and testament of Kate Read Blacque, deceased, respectfully shows:

I.

297

City Bank Farmers Trust Company is a corporation duly organized under the banking laws of the State of New York and is engaged in said state in the business of a trust company, with its principal office and place of business at No. 22 William Street, New York, N. Y. The said Kate Read Blacque died on April 3, 1937, a citizen of the United States residing in the City, County and State of New York, leaving a last will and testament which was duly admitted to probate by the Surrogate's Court of New York County, New York, on April 27, 1937. On said

298 last mentioned date letters testamentary were duly issued by said court to said City Bank Farmers Trust Company, the executor named in said will, which since said date has been and is now the duly appointed, qualified and acting executor of said last will and testament and which, as such executor, is the petitioner herein.

The respondent is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, appointed and holding office by virtue of the laws of the United States.

The Federal estate tax return of the estate of said decedent was duly filed by the petitioner on July 1, 1938,
299 with the United States Collector of Internal Revenue for the Second District of New York, Custom House, New York, N. Y. The court in which the review of this proceeding is sought is the Circuit Court of Appeals for the Second Circuit, the circuit in which is located the office of said Collector.

II.

The nature of the controversy is as follows:

The petitioner elected on said Federal estate tax return to have the value of the gross estate of said decedent
300 determined by valuing all the property included therein on the date of the decedent's death as of the date one year after death, or on the other applicable valuation dates in the case of property distributed, sold, exchanged or otherwise disposed of between the date of death and the date one year after death, pursuant to the provisions of Section 302 (j) of the Revenue Act of 1926, as added by Section 202 (a) of the Revenue Act of 1935. During the period of one year after the death of said decedent the petitioner received in cash (1) interest of $4,863.55 which accrued after the date of death on bonds owned by the

decedent at the time of her death and retained by the 301
petitioner until the expiration of said one-year period; (2) interest of $1,212.24 which accrued after the date of death on bonds owned by the decedent on the date of death but sold or redeemed within the one-year period, and which interest was received from the purchaser on sale or the obligor on redemption; and (3) dividends of $43,947.83 on stocks owned by the decedent at the date of death which were payable to stockholders of record as of a date subsequent to that date. In addition thereto, on the date one year after the decedent's death, interest of $578.08 had accrued but was not due on bonds owned by the decedent on the date of death, and dividends of 302
$3,262.75 had been declared on stocks owned by the decedent on the date of death but were payable subsequent to one year after the date of death to stockholders of record as of a date within the period of one year after the date of death. Those five items of interest and dividends, amounting to $53,864.45, were disclosed by the petitioner on said return for purposes of information but were not included in the gross estate for estate tax purposes.

The respondent on April 3, 1939, issued a notice of deficiency setting forth his final determination of the estate tax liability of said estate and therein determined that, in addition to the assets owned by the decedent on the date of her death, there should be included in said gross estate 303
the said items of income accruing or arising after the date of death, amounting to $53,864.45, and on the basis of such determination determined that there was a deficiency of $13,996.28 in the estate tax on said estate.

The petitioner on April 8, 1939, filed a petition with the United States Board of Tax Appeals appealing from such determination. On motion duly made by the petitioner and granted by the Board the proceeding so instituted was consolidated with a proceeding instituted by City Bank Farmers Trust Company, as executor of the last will and

304 testament of Cordelia Y. Abendroth, deceased, Board of Tax Appeals Docket No. 94755, and on September 29, 1939, said consolidated proceedings were submitted to the Board on the pleadings and a stipulation of facts. On May 17, 1940, the Board rendered its opinion in said proceedings in which it sustained the respondent's said determination, and on May 18, 1940, the Board entered its decision determining that there is a deficiency of $13,996.28 in the estate tax on said estate.

III.

305 The petitioner, as a basis for such review, makes the following assignment of errors committed by the United States Board of Tax Appeals:

1. The Board erred in holding that where the executor of a decedent's estate elects upon the estate tax return, pursuant to the provisions of Section 302 (j) of the Revenue Act of 1926, as added by Section 202 (a) of the Revenue Act of 1935, to have the gross estate valued as of the date one year after death or other optional valuation dates specified in said section, there must be included as part of the gross estate income consisting of interest and dividends accruing or arising after the date of death, and in
306 failing and refusing to hold that such items of income should be excluded from the gross estate.

2. The Board erred in holding that said items of interest and dividends amounting to $53,864.45, which accrued or arose wholly after the decedent's death, or any part thereof, was part of the property included in the decedent's gross estate on the date of her death and in failing and refusing to hold that such interest and dividends were not part of such property on the date of death.

3. The Board erred in holding that said items of interest and dividends amounting to $53,864.45, or any part thereof, was part of the decedent's gross estate for estate tax purposes, and in failing and refusing to hold that said items should be excluded from such gross estate. 307

4. The Board erred in determining that there is a deficiency of $13,996.28, or any other amount, in the estate tax on said estate, and in failing and refusing to hold that there is no deficiency in such tax.

WHEREFORE, the petitioner prays that the decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Second Circuit; that a transcript of the record be prepared in accordance with the law and rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court. 308

ROLLIN BROWNE,
JAMES D. OUCHTERLONEY,
GEORGE CRAVEN,
Attorneys for Petitioner,
20 Exchange Place,
New York, N. Y. 309

MITCHELL, TAYLOR, CAPRON & MARSH,
20 Exchange Place,
New York, N. Y.,
Of Counsel.

State of New York,
County of New York—ss.:

GEORGE CRAVEN, being duly sworn, deposes and says that he is one of the attorneys and counsel of record for the petitioner in the above-entitled case; that as such attorney and counsel he is duly authorized to verify the petition for review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the United States Board of Tax Appeals in the proceeding described in the foregoing petition; that he has read the said petition and knows the contents thereof, and that the facts set forth therein are true to the best of his knowledge, information and belief.

GEORGE CRAVEN.

Subscribed and sworn to before me
this 2nd day of July, 1940.

BERTHA BUSSELL,
Notary Public,
Bronx County.
Bronx Co. Clk's No. 135, Reg. No. 108B42.
N. Y. Co. Clk's No. 450, Reg. No. 2B327.
Kings Co. Clk's No. 222, Reg. No. 2233.
Commission expires March 30, 1942.
(Notary Seal)

Notice of Filing of Petition for Review. 313

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

Board of Tax Appeals, Docket No. 97857.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, Deceased, 314

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

To the Commissioner of Internal Revenue:

315 You are hereby notified that the petitioner, City Bank Farmers Trust Company, as executor of the last will and testament of Kate Read Blacque, deceased, did on the 5th day of July, 1940, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the Board of Tax Appeals heretofore entered in the above-entitled case. A copy of the petition for review, together with the assign-

316 ment of errors as filed, is attached hereto and served upon you herewith.

Dated this 6th day of July, 1940.

ROLLIN BROWNE,
JAMES D. OUCHTERLONEY,
GEORGE CRAVEN,
Attorneys for Petitioner,
20 Exchange Place,
New York, N. Y.

MITCHELL, TAYLOR, CAPRON & MARSH,
20 Exchange Place,
317 New York, N. Y.,
Of Counsel.

Personal service of the foregoing notice, together with a copy of the petition for review and assignment of errors mentioned therein, is hereby acknowledged this 6th day of July, 1940.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

318

Stipulation of Counsel.

319

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

Board of Tax Appeals, Docket No. 94755.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Cordelia Y. Abendroth, Deceased,

Petitioner,

320

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Board of Tax Appeals, Docket No. 97857.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, Deceased,

Petitioner,

—against—

321

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

IT IS STIPULATED AND AGREED between the parties to the above-entitled cases, which were consolidated for hearing by order of the Board of Tax Appeals and in which petitions for review by the United States Circuit Court of Appeals for the Second Circuit were filed on July 5, 1940,

322 that because the issue is the same in both cases, said cases may be consolidated for preparation of the record to be filed with said Circuit Court of Appeals and for hearing by said Court, and that one consolidated record of the proceedings in both cases in the United States Board of Tax Appeals may be filed with said Court.

Dated: July 19, 1940.

GEORGE CRAVEN,
Counsel for Petitioners.

323

J. P. WENCHEL,
Chief Counsel for
Bureau of Internal Revenue,
Counsel for Respondents.

So ordered,

D. E. ROBERTS,
Clerk,

August 5, 1940.

A true copy,

D. E. ROBERTS,
324 Clerk.
(Seal)

Praecipe for Record.

IN THE 325

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

Board of Tax Appeals, Docket No. 94755.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Cordelia Y. Abendroth, Deceased,
Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE, 323
Respondent.

Board of Tax Appeals, Docket No. 97857.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, Deceased,
Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

327

To the Clerk of the United States Board of Tax Appeals:

You are hereby requested to prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Second Circuit a consolidated transcript of the record in the above-entitled cases, which were consolidated for hearing by order of the Board entered August 19, 1939, said record to be prepared and transmitted by law and the rules of said Court in connection with the petitions for review by said Circuit Court of

328 Appeals heretofore filed therein by the petitioners, and you are requested to include therein copies, duly certified as correct, of the following entries and documents:

1. Docket entries of the proceedings in each case before the Board.
2. Pleadings in each case before the Board, as follows:
   (a) Petition, including annexed copy of deficiency notice;
   (b) Answer.
3. Motion of petitioners for consolidation of cases and
329 notation saying that motion was granted by the Board.
4. Stipulation of facts and exhibits annexed thereto.
5. Opinions of Board.
6. Decision of Board in each case.
7. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review, in each case.
8. Stipulation and order of Circuit Court of Appeals for Second Circuit entered thereon for consolidation
330 of cases.
9. This praecipe.

GEORGE CRAVEN,
Counsel for Petitioners.

Service is hereby acknowledged of the foregoing praecipe this 10th day of August, 1940. No counter-praecipe will be filed.

J. P. WENCHEL,
Chief Counsel for
Bureau of Internal Revenue,
Counsel for Respondent.

Certificate.

UNITED STATES BOARD OF TAX APPEALS,

WASHINGTON.

Docket No. 94755.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Cordelia Y. Abendroth, Deceased,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 97857.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST COMPANY, as Executor of the Last Will and Testament of Kate Read Blacque, Deceased,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

I, B. D. Gamble, Clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 122, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeals as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 15th day of August, 1940.

B. D. GAMBLE,
Clerk,
United States Board of Tax Appeals.

(Seal)

Opinion, Circuit Court of Appeals.

337

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

Nos. 82 & 83—October Term, 1940.

(Argued October 8, 1940 Decided October 8, 1940.)

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST CO., as Executor, etc.,

Petitioner,

v.

338

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST CO., as Executor, etc.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Appeals from the United States Board of Tax Appeals.

339

Before—L. HAND, SWAN and AUGUSTUS N. HAND,

Circuit Judges.

ROLLIN BROWNE, for the Petitioners.

HARRY MARSELLI, for the Respondent.

Orders affirmed in open court on authority of *Saks* v. *Higgins*, 111 Fed. (2d) 78.

Order for Mandate.

340 UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 10th day of October, one thousand nine hundred and forty.

Present—HON. LEARNED HAND,
HON. THOMAS W. SWAN,
HON. AUGUSTUS N. HAND,
Circuit Judges.

341

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST CO., Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Appeal from the United States Board of Tax Appeals.

342 This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a Mandate issue forthwith to the said Board in accordance with this decree.

D. E. ROBERTS,
Clerk.

(Back)

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UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST CO., E. ecutors,

vs.

COMMISSIONER OF INTERNAL REVENUE.

ORDER FOR MANDATE.

344

UNITED STATES CIRCUIT COURT
OF APPEALS

SECOND CIRCUIT

Filed Oct. 10, 1940

D. E. ROBERTS, Clerk.

345

Order for Mandate.

346 UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 10th day of October, one thousand nine hundred and forty.

Present—HON. LEARNED HAND,
HON. THOMAS W. SWAN,
HON. AUGUSTUS N. HAND,
Circuit Judges.

347

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST CO., Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Appeal from the United States Board of Tax Appeals.

348 This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a Mandate issue forthwith to the said Board in accordance with this decree.

D. E. ROBERTS,
Clerk.

(Back)

349

UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST CO., Executors,

vs.

COMMISSIONER OF INTERNAL REVENUE.

ORDER FOR MANDATE. 350

UNITED STATES CIRCUIT COURT OF APPEALS

SECOND CIRCUIT

Filed Oct. 10, 1940

D. E. ROBERTS, Clerk.

351

Clerk's Certificate.

352

UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF NEW YORK.

I, D. E. ROBERTS, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 116, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of

ESTATE OF CORDELIA Y. ABENDROTH, CITY BANK FARMERS TRUST CO., Executors,

Petitioners,

353

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ESTATE OF KATE READ BLACQUE, CITY BANK FARMERS TRUST CO., Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

354 as the same remain of record and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this tenth day of October, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the said United States the one hundred and sixty-fifth.

D. E. ROBERTS,
Clerk.

(Seal)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 510

ORDER ALLOWING CERTIORARI—Filed November 18, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following No. 274.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 511

ORDER ALLOWING CERTIORARI—Filed November 18, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following Nos. 274 and 510.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.